

VOLUME I  
CHAPTERS 1 THROUGH 297

# **LAWS**

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

BEGUN AND HELD AT BISMARCK, THE CAPITAL, ON  
TUESDAY, JANUARY 3, 2023, AND  
CONCLUDING SUNDAY, APRIL 30, 2023



# **AUTHENTICATION**

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## **STATE OF NORTH DAKOTA Department of State, Bismarck**

I, Michael Howe, 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-eighth Session of the Legislative Assembly of the State of North Dakota, beginning Tuesday, January 3, 2023, and concluding Sunday, April 30, 2023.

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 2023.

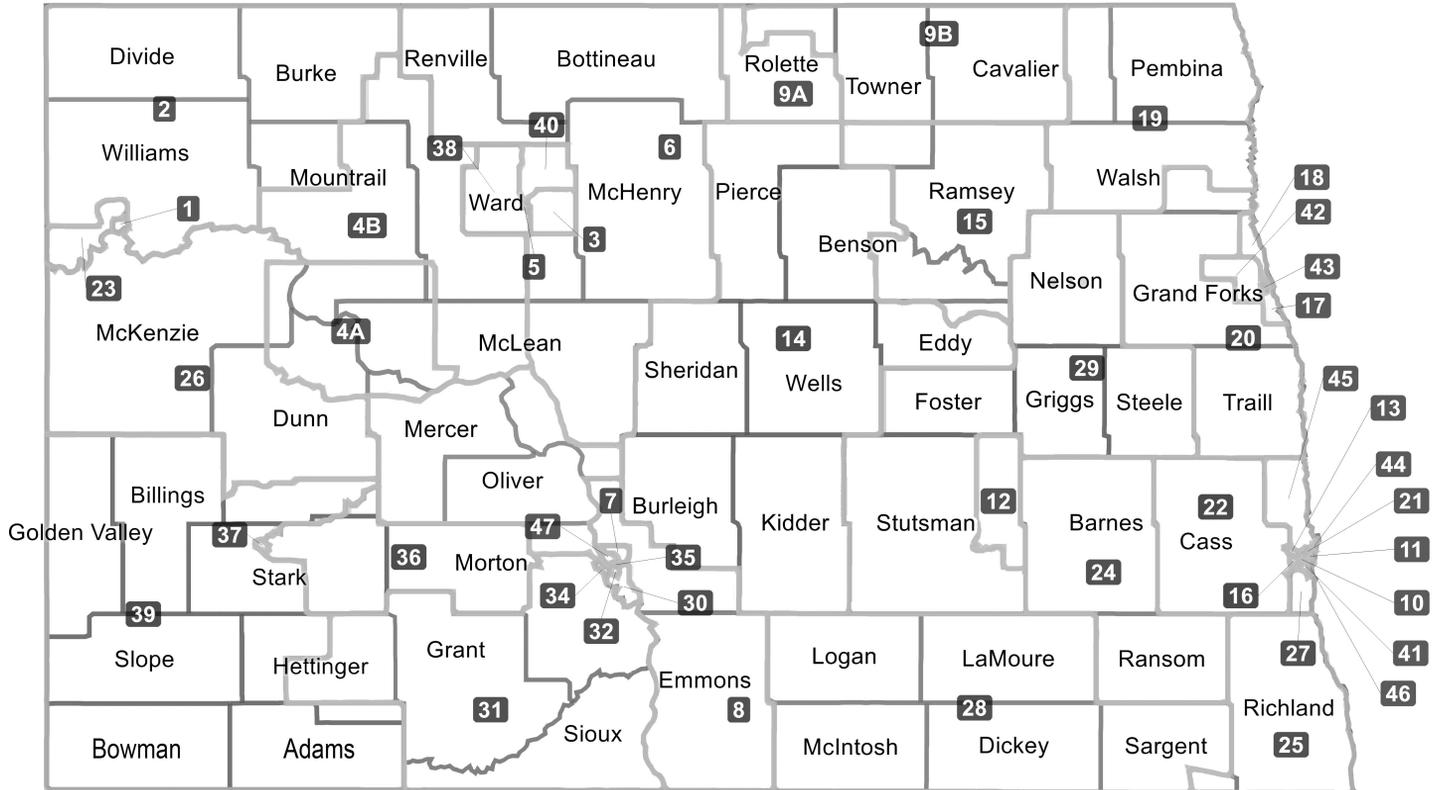
(SEAL)

**MICHAEL HOWE**  
Secretary of State

John Bjornson, Jennifer S.N. Clark, and Samantha E. Kramer 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.

**JOHN BJORNSON**  
Legislative Council  
Director  
**JENNIFER S.N. CLARK**  
Code Revisor  
**SAMANTHA E. KRAMER**  
Assistant Code Revisor





Legislative Districting Effective During the Sixty-eighth Legislative Session



**SENATE**

**President - Lieutenant Governor Tammy Miller**

**Secretary - Shanda Morgan, Bismarck**

<b>Dist.</b>	<b>County</b>	<b>Name</b>	<b>Affil.</b>	<b>Address</b>
1	Pt. Williams	Brad Bekkedahl	R	Williston
2	Burke, Divide, Pt. Mountrail, Pt. Williams	David S. Rust	R	Tioga
3	Pt. Ward	Bob Paulson	R	Minot
4	Pt. Dunn, Pt. McKenzie, Pt. McLean, Pt. Mercer, Pt. Mountrail, Pt. Ward	Jordan Kannianen	R	Stanley
5	Pt. Ward	Randy A. Burckhard	R	Minot
6	Bottineau, McHenry, Pt. McLean, Renville, Pt. Ward	Shawn Vedaa	R	Velva
7	Pt. Burleigh	Michelle Axtman	R	Bismarck
8	Pt. Burleigh, Emmons, Pt. McLean	Jeffrey J. Magrum	R	Hazleton
9	Pt. Cavalier, Rolette, Pt. Towner	Kent Weston	R	Sarles
10	Pt. Cass	Ryan Braunberger	D	Fargo
11	Pt. Cass	Tim Mathern	D	Fargo
12	Pt. Stutsman	Cole Conely	R	Jamestown
13	Pt. Cass	Judy Lee	R	West Fargo
14	Pt. Benson, Pt. Burleigh, Pt. Eddy, Kidder, Pierce, Sheridan, Wells	Jerry Klein	R	Fessenden
15	Pt. Benson, Pt. Eddy, Ramsey, Pt. Towner	Judy Estenson	R	Warwick
16	Pt. Cass	David A. Clemens	R	West Fargo
17	Pt. Grand Forks	Jonathan Sickler	R	Grand Forks
18	Pt. Grand Forks	Scott Meyer	R	Grand Forks
19	Pt. Cavalier, Pembina, Pt. Walsh	Janne Myrdal	R	Edinburg
20	Pt. Grand Forks, Traill, Pt. Walsh	Randy D. Lemm	R	Hillsboro
21	Pt. Cass	Kathy Hogan	D	Fargo
22	Pt. Cass	Mark F. Weber	R	Casselton
23	Pt. Williams	Todd Beard	R	Williston
24	Barnes, Ransom	Michael A. Wobbema	R	Valley City
25	Richland, Pt. Sargent	Larry Luick	R	Fairmount
26	Pt. Dunn, Pt. McKenzie	Dale Patten	R	Watford City
27	Pt. Cass	Kristin Roers	R	Fargo
28	Dickey, LaMoure, Logan, McIntosh, Pt. Sargent	Robert Erbele	R	Lehr
29	Foster, Griggs, Nelson, Steele, Pt. Stutsman	Terry M. Wanzek	R	Jamestown
30	Pt. Burleigh	Diane Larson	R	Bismarck
31	Grant, Pt. Hettinger, Pt. Morton, Sioux	Donald Schaible	R	Mott
32	Pt. Burleigh	Dick Dever	R	Bismarck

33	Pt. McLean, Pt. Mercer, Pt. Morton, Oliver	Keith Boehm	R	Mandan
34	Pt. Morton	Doug Larsen	R	Mandan
35	Pt. Burleigh	Sean Cleary	R	Bismarck
36	Pt. Dunn, Pt. Morton, Pt. Stark	Jay R. Elkin	R	Taylor
37	Pt. Stark	Dean Rummel	R	Dickinson
38	Pt. Ward	David Hogue	R	Minot
39	Adams, Billings, Bowman, Pt. Dunn, Golden Valley, Pt. McKenzie, Slope	Greg Kessel	R	Watford City
40	Pt. Ward	Karen K. Krebsbach	R	Minot
41	Pt. Cass	Kyle Davison	R	Fargo
42	Pt. Grand Forks	Curt Kreun	D	Grand Forks
43	Pt. Grand Forks	Jeff Barta	R	Grand Forks
44	Pt. Cass	Merrill Piepkorn	D	Fargo
45	Pt. Cass	Ronald Sorvaag	R	Fargo
46	Pt. Cass	Jim P. Roers	R	Fargo
47	Pt. Burleigh	Michael Dwyer	R	Bismarck

**HOUSE OF REPRESENTATIVES**  
**Speaker - Dennis Johnson**  
**Chief Clerk - Buell Reich, Bismarck**

<b>Dist.</b>	<b>County</b>	<b>Name</b>	<b>Affil.</b>	<b>Address</b>
1	Pt. Williams	Patrick Hatlestad	R	Williston
1	Pt. Williams	David Richter	R	Williston
2	Burke, Divide, Pt. Mountrail, Pt. Williams	Bert Anderson	R	Crosby
2	Burke, Divide, Pt. Mountrail, Pt. Williams	Donald W. Longmuir	R	Stanley
3	Pt. Ward	Jeff A. Hoverson	R	Minot
3	Pt. Ward	Lori VanWinkle	R	Minot
4a	Pt. Dunn, Pt. McKenzie, Pt. McLean, Pt. Mercer, Pt. Mountrail, Pt. Ward	Lisa Finley-Deville	D	Mandaree
4b	Pt. McLean, Pt. Mountrail, Pt. Ward	Clayton Fegley	R	Berthold
5	Pt. Ward	Jay Fisher	R	Minot
5	Pt. Ward	Scott Louser	R	Minot
6	Bottineau, McHenry, Pt. McLean, Renville, Pt. Ward	Dick Anderson	R	Willow City
6	Bottineau, McHenry, Pt. McLean, Renville, Pt. Ward	Paul J. Thomas	R	Velva
7	Pt. Burleigh	Matt Heilman	R	Bismarck
7	Pt. Burleigh	Jason Dockter	R	Bismarck
8	Pt. Burleigh, Emmons, Pt. McLean	SuAnn Olson	R	Baldwin
8	Pt. Burleigh, Emmons, Pt. McLean	Brandon Prichard	R	Bismarck
9a	Pt. Rolette	Jayne Davis	D	Rolette
9b	Pt. Rolette, Pt. Towner, Pt. Cavalier	Donna Henderson	R	Calvin
10	Pt. Cass	Hamida Dakane	D	Fargo
10	Pt. Cass	Steve Swiontek	R	Fargo
11	Pt. Cass	Liz Comey	D	Fargo
11	Pt. Cass	Gretchen Dobervich	D	Fargo
12	Pt. Stutsman	Mitch Ostlie	R	Jamestown
12	Pt. Stutsman	Bernie Satrom	R	Jamestown
13	Pt. Cass	Jim Jonas	R	West Fargo
13	Pt. Cass	Austen Schauer	R	West Fargo
14	Pt. Benson, Pt. Burleigh, Pt. Eddy, Kidder, Pierce, Sheridan, Wells	Jon O. Nelson	R	Rugby
14	Pt. Benson, Pt. Burleigh, Pt. Eddy, Kidder, Pierce, Sheridan, Wells	Robin Weisz	R	Hurdsfield
15	Pt. Benson, Pt. Eddy, Ramsey, Pt. Towner	Kathy Frelich	R	Devils Lake
15	Pt. Benson, Pt. Eddy, Ramsey, Pt. Towner	Dennis Johnson	R	Devils Lake
16	Pt. Cass	Ben Koppelman	R	West Fargo

16	Pt. Cass	Andrew Marschall	R	West Fargo
17	Pt. Grand Forks	Landon Bahl	R	Grand Forks
17	Pt. Grand Forks	Mark Sanford	R	Grand Forks
18	Pt. Grand Forks	Corey Mock	D	Grand Forks
18	Pt. Grand Forks	Steve Vetter	D	Grand Forks
19	Pt. Cavalier, Pembina, Pt. Walsh	Karen A. Anderson	R	Grafton
19	Pt. Cavalier, Pembina, Pt. Walsh	David Monson	R	Osnabrock
20	Pt. Grand Forks, Traill, Pt. Walsh	Mike Beltz	R	Hillsboro
20	Pt. Grand Forks, Traill, Pt. Walsh	Jared Hagert	R	Emerado
21	Pt. Cass	LaurieBeth Hager	D	Fargo
21	Pt. Cass	Mary Schneider	D	Fargo
22	Pt. Cass	Brandy Pyle	R	Casselton
22	Pt. Cass	Jonathan Warrey	R	Casselton
23	Pt. Williams	Scott Dyk	R	Williston
23	Pt. Williams	Nico Rios	R	Williston
24	Barnes, Ransom	Cole Christensen	R	Rogers
24	Barnes, Ransom	Dwight Kiefert	R	Valley City
25	Richland, Pt. Sargent	Alisa Mitskog	D	Wahpeton
25	Richland, Pt. Sargent	Cynthia Schreiber- Beck	R	Wahpeton
26	Pt. Dunn, Pt. McKenzie	Jeremy Olson	R	Arnegard
26	Pt. Dunn, Pt. McKenzie	Kelby Timmons	R	Watford City
27	Pt. Cass	Josh Christy	R	Fargo
27	Pt. Cass	Greg Stemen	R	Fargo
28	Dickey, LaMoure, Logan, McIntosh, Pt. Sargent	Mike Brandenburg	R	Edgeley
28	Dickey, LaMoure, Logan, McIntosh, Pt. Sargent	Jim Grueneich	R	Ellendale
29	Foster, Griggs, Nelson, Steele, Pt. Stutsman	Craig Headland	R	Montpelier
29	Foster, Griggs, Nelson, Steele, Pt. Stutsman	Don Vigesaa	R	Cooperstown
30	Pt. Burleigh	Glenn Bosch	R	Bismarck
30	Pt. Burleigh	Mike Nathe	R	Bismarck
31	Grant, Pt. Hettinger, Pt. Morton, Sioux	Dawson Holle	R	Mandan
31	Grant, Pt. Hettinger, Pt. Morton, Sioux	Karen M. Rohr	R	Mandan
32	Pt. Burleigh	Pat D. Heinert	R	Bismarck
32	Pt. Burleigh	Lisa Meier	R	Bismarck
33	Pt. McLean, Pt. Mercer, Pt. Morton, Oliver	Anna S. Novak	R	Hazen
33	Pt. McLean, Pt. Mercer, Pt. Morton, Oliver	Bill Tveit	R	Hazen
34	Pt. Morton	Todd Porter	R	Mandan
34	Pt. Morton	Nathan Toman	R	Mandan
35	Pt. Burleigh	Karen Karls	R	Bismarck
35	Pt. Burleigh	Bob Martinson	R	Bismarck
36	Pt. Dunn, Pt. Morton, Pt. Stark	Dori Hauck	R	Hebron

36	Pt. Dunn, Pt. Morton, Pt. Stark	Gary Kreidt	R	New Salem <sup>xi</sup>
37	Pt. Stark	Mike Lefor	R	Dickinson
37	Pt. Stark	Vicky Steiner	R	Dickinson
38	Pt. Ward	Larry Bellew	R	Minot
38	Pt. Ward	Dan Ruby	R	Minot
39	Adams, Billings, Bowman, Pt. Dunn, Pt. Hettinger, Slope, Pt. Stark	Keith Kempenich	R	Bowman
39	Adams, Billings, Bowman, Pt. Dunn, Pt. Hettinger, Slope, Pt. Stark	Mike Schatz	R	New England
40	Pt. Ward	Matthew Ruby	R	Minot
40	Pt. Ward	Randy A. Schobinger	R	Minot
41	Pt. Cass	Jorin Johnson	R	Fargo
41	Pt. Cass	Michelle Strinden	R	Fargo
42	Pt. Grand Forks	Claire Cory	R	Grand Forks
42	Pt. Grand Forks	Emily O'Brien	R	Grand Forks
43	Pt. Grand Forks	Zachary Ista	D	Grand Forks
43	Pt. Grand Forks	Eric James Murphy	D	Grand Forks
44	Pt. Cass	Josh Boschee	D	Fargo
44	Pt. Cass	Karla Rose Hanson	D	Fargo
45	Pt. Cass	Carrie McLeod	R	Fargo
45	Pt. Cass	Scott Wagner	R	Fargo
46	Pt. Cass	Jim Kasper	R	Fargo
46	Pt. Cass	Shannon Roers Jones	R	Fargo
47	Pt. Burleigh	Lawrence R. Klemin	R	Bismarck
47	Pt. Burleigh	Mike Motschenbacher	R	Bismarck



**EMPLOYEES  
EMPLOYEES OF THE 68<sup>th</sup> LEGISLATIVE ASSEMBLY**

**LEGISLATIVE COUNCIL**

John Bjornson	Director
Lori Ziegler	Legislative Administrative Officer
Kylah E. Aull	Manager, Library and Record Services
Melissa Ingram	Library and Records Assistant

**Legal Division**

Emily Thompson	Legal Division Director
Jennifer S. N. Clark	Senior Counsel and Code Revisor
Samantha E. Kramer	Senior Counsel and Assistant Code Revisor
Christopher S. Joseph	Senior Counsel
Megan J. Gordon	Counsel
Dustin A. Richard	Counsel
Austin Gunderson	Counsel
Liz Fordahl	Counsel

**Fiscal Services Division**

Allen H. Knudson	Legislative Budget Analyst and Auditor
Brady A. Larson	Assistant Legislative Budget Analyst and Auditor
Sheila M. Sandness	Senior Fiscal Analyst
Adam Mathiak	Senior Fiscal Analyst
Alex J. Cronquist	Senior Fiscal Analyst
Levi Kinnischtzke	Senior Fiscal Analyst
Toby S. Mertz	Fiscal Analyst

**Administrative Services Division**

Jason J. Steckler	Division Director
Andrea Cooper	Legislative Analyst

**Office Services**

Donavan D. Klein	Administrative Unit Supervisor
Kayla Seifert	Front Desk Specialist
Brad Metz	Lead Legislative Administrative Specialist
Justin J. Blasy	Legislative Administrative Specialist II
Robert Tallman	Legislative Administrative Specialist II
Haley Dubourt	Legislative Administrative Specialist I
McKenna Wegner	Legislative Administrative Specialist I

**Information Technology Services**

Cody Malloy	Information Technology Manager
Brady Mueller	Senior Information Technology Specialist
Tyler Biegler	Senior Information Technology Specialist
Kyle Cosman	Information Technology Specialist
Adam Roeder	Information Technology Specialist
Chad Gumeringer	Senior Legislative Information Technology Administrator
Ron B. Zarr	Legislative Information Technology Administrator
Kimber Krueger	Legislative IT Developer/Business Analyst
John Olheiser	Legislative Information Technology Developer
Cliff Kaputska	Legislative Information Technology Developer

**LEGISLATIVE COUNCIL SESSION EMPLOYEES**

Kasey Degenstein	Office Assistant
------------------	------------------

**LEGISLATIVE INTERNS**

Victoria Christian	Senate Industry and Business
	Senate Agriculture and Veterans Affairs
Matthew Costello	Senate Finance and Taxation
	Senate Transportation
Zak Heier	Senate Judiciary
	Senate Energy and Natural Resources
Roman Knudsvig	House Industry, Business and Labor
	House Agriculture
Connor McCormick	Senate Education
	Senate State and Local Government
Casey Orvedal	House Finance and Taxation
	House Transportation
Lindsey Pouliot	Senate Human Services
	Senate Workforce Development
Aryan Siadar	House Judiciary
	House Political Subdivisions
Kanwar Sra	House Education
	House Energy and Natural Resources
Kyra Sundleaf	House Human Services
	House Government and Veterans Affairs

**HOUSE OF REPRESENTATIVES**

Lavata Becker	Bill and Recording Clerk
Risa Berbube	Procedural Appropriations Committee Clerk
Mary Brucker	Procedural Committee Clerk
Brooke Chilla	Administrative Assistant to the Majority Leader
Marge Conley	Chief Page/Chief Legislative Assistant
Richard Conley	Technological Committee Clerk
Jeanette Cook	Technological Committee Clerk
Kathleen Davis	Procedural Committee Clerk
Alice Delzer	Page/Legislative Assistant
Lily Dever	Page/Legislative Assistant
Karen Ehrens	Administrative Assistant to the Minority Leader
Robyn Engelstad	Assistant Appropriations Procedural Committee Clerk
Dean Erbele	Assistant Sergeant-at-Arms
Paul Fleckenstein	Technological Appropriations Committee Clerk
Caitlin Fleck-Noomen	Quality Assurance Clerk
Don Fuerstenberg	Assistant Sergeant-at-Arms
Audrey Grafsgaard	Journal Reporter
Tirzah Joy Hanson	Page/Legislative Assistant
Phillip Jacobs	Procedural Committee Clerk
Jan Kamphuis	Assistant Appropriations Procedural Committee Clerk
Kenneth Karls	Assistant Appropriations Technological Committee Clerk
Elvira Ketterling	Assistant Appropriations Technological Committee Clerk
Donna Knutson	Assistant Appropriations Procedural Committee Clerk
Ellen LeTang	Administrative Assistant to the Majority Leader
Diane Lillis	Procedural Committee Clerk
Eugene Masse	Deputy Sergeant-at-Arms
ReMae Kuehn	Administrative Assistant to the Speaker
Allan Mastel	Technological Committee Clerk
Beverly Monroe	Technological Committee Clerk
Jerry Moszer	Sergeant-at-Arms
Timothy Paulson	Technological Committee Clerk
Jessica Pinks	Desk Page/Legislative Assistant

Buell Reich  
 Jillian Schaible  
 DeLores Shimek  
 Ron Fiest  
 David Waind  
 Roman Weiler  
 Donna Whetham  
 Edwin Whetham  
 Mark Zimmerman

Chief Clerk  
 Assistant Appropriations Technological Committee Clerk  
 Procedural Committee Clerk  
 Parking Lot Attendant  
 Assistant Sergeant-at-Arms  
 Assistant Sergeant-at-Arms  
 Deputy Chief Clerk  
 Calendar Clerk  
 Assistant Chief Clerk

### SENATE

Danielle Butler  
 Brenda Cook  
 Pam Dever  
 Renae Doan  
 Dawson Dutchak  
 Pamela Fenoff  
 Sheila Froehlich  
 Ron Gervig  
 Denielle Glas  
 Kathleen Hall  
 Susan Huntington  
 Rachael Kannianen  
 Pat Lahr  
 Linda Lang  
 Lyle Lauf  
 Sonja King  
 Shanda Morgan  
 Dave Owens  
 Callie Paulson  
 Tucker Paulson  
 Dennis Rodin  
 Wayne Rogstad  
 Gail Schauer  
 Clare Schnaible  
 Kim Schneider  
 Rick Schuchard  
 Noreen Steckler  
 John Strand  
 Skyler Strand  
 Carol Thompson  
 Kathy Wachter  
 Carie Winings  
 Joe Wolf  
 Lynn Wolf  
 Sheldon Wolf

Procedural Committee Clerk  
 Procedural Committee Clerk  
 Procedural Committee Clerk  
 Administrative Assistant to the Majority Leader  
 Technological Committee Clerk  
 Technological Appropriations Committee Clerk  
 Technological Committee Clerk  
 Assistant Sergeant-at-Arms  
 Staff Assistant to the Minority Leader  
 Procedural Appropriations Committee Clerk  
 Assistant Appropriations Procedural Clerk  
 Legislative Assistant/Page  
 Technological Committee Clerk  
 Chief Page  
 Deputy Sergeant-at-Arms  
 Journal Reporter  
 Secretary of the Senate  
 Technological Committee Clerk  
 Legislative Assistant/Page  
 Assistant Appropriations Technological Clerk  
 Assistant Secretary of the Senate  
 Sergeant-at-Arms  
 Quality Assurance Clerk  
 Assistant Appropriations Technological Clerk  
 Bill and Recording Clerk  
 Procedural Committee Clerk  
 Assistant Sergeant-at-Arms/Bill Room  
 Assistant Sergeant-at-Arms/Supply Room  
 Staff Assistant to the Majority Leader  
 Assistant Appropriations Procedural Clerk  
 Administrative Assistant to the Minority Leader  
 Chief Committee Clerk  
 Calendar Clerk  
 Technological Committee Clerk  
 Technological Committee Clerk



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# APPROPRIATIONS

## CHAPTER 1

### HOUSE BILL NO. 1001

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the legislative branch of state government; to amend and reenact sections 54-03-20 and 54-35-10 of the North Dakota Century Code, relating to legislative compensation; to provide a report; to provide an exemption; to provide for application, transfer, and cancellation of unexpended 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 the insurance regulatory trust fund, not otherwise appropriated, to the legislative branch of state government for the purpose of defraying the expenses of the legislative branch of state government, for the fiscal period beginning with the effective date of this Act and ending June 30, 2025, as follows:

##### Subdivision 1.

#### SIXTY-EIGHTH AND SIXTY-NINTH LEGISLATIVE ASSEMBLIES AND BIENNIUM

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$11,430,094	\$1,520,473	\$12,950,567
Operating expenses	6,218,753	(668,594)	5,550,159
Capital assets	6,000	4,926,600	4,932,600
National conference of state legislatures	<u>271,333</u>	<u>11,737</u>	<u>283,070</u>
Total general fund	\$17,926,180	\$5,790,216	\$23,716,396

##### Subdivision 2.

#### LEGISLATIVE MANAGEMENT AND LEGISLATIVE COUNCIL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$12,690,980	\$1,952,397	\$14,643,377
New and vacant FTE funding pool	0	479,137	479,137
Operating expenses	3,045,430	890,982	3,936,412
Capital assets	<u>6,000</u>	<u>120,000</u>	<u>126,000</u>
Total all funds	\$15,742,410	\$3,442,516	\$19,184,926
Less estimated income	<u>70,000</u>	<u>18,000</u>	<u>88,000</u>
Total general fund	\$15,672,410	\$3,424,516	\$19,096,926
Full-time equivalent positions	44.00	1.00	45.00

## Subdivision 3.

## TOTAL - SECTION 1

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$33,598,590	\$9,214,732	\$42,813,322
Grand total special funds	<u>70,000</u>	<u>18,000</u>	<u>88,000</u>
Grand total all funds	\$33,668,590	\$9,232,732	\$42,901,322

**SECTION 2. LEGISLATIVE ASSEMBLY ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 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>2021-23</u>	<u>2023-25</u>
Redistricting session	\$316,284	\$0
Information technology expansion	1,450,000	0
Propylon core upgrade	0	4,816,600
Audio and video storage	0	110,000
Computer and iPad replacement	0	557,950
Chamber upgrades	<u>0</u>	<u>220,000</u>
Total general fund	\$1,766,284	\$5,704,550

The 2023-25 biennium one-time funding amounts are not part of the entity's base budget for the 2025-27 biennium. The legislative assembly shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. LEGISLATIVE MANAGEMENT AND LEGISLATIVE COUNCIL ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 one-time funding items included in the appropriation for the legislative management and legislative council in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Information technology expansion	\$48,000	\$0
Public website design	150,000	0
Acute psychiatric hospitalization study	500,000	0
Computer and iPad replacement	0	155,500
Secondary and backup servers	<u>0</u>	<u>120,000</u>
Total general fund	\$698,000	\$275,500

The 2023-25 biennium one-time funding amounts are not part of the entity's base budget for the 2025-27 biennium. The legislative council shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 4. EXEMPTION - TRANSFERS.** Notwithstanding section 54-16-04, the director of the office of management and budget shall transfer appropriation authority between line items of the legislative management and legislative council as may be requested by the chairman of the legislative management or the director of the legislative council upon the finding by the chairman or the director that the nature of studies and duties assigned to the legislative management or legislative council requires the transfers in properly carrying on the legislative management's and

legislative council's functions and duties. The director of the office of management and budget shall similarly make transfers of appropriation authority between the line items for the sixty-eighth and sixty-ninth legislative assemblies, upon request by the chairman of the legislative management or the director of the legislative council upon the finding by the chairman or director that the transfers are required for the legislative assembly to carry on its functions and duties.

**SECTION 5. APPLICATION, TRANSFER AUTHORITY, AND CANCELLATION OF UNEXPENDED APPROPRIATIONS.** Sections 54-16-04 and 54-44.1-11 do not apply to chapter 29 of the 2021 Session Laws. The director of the office of management and budget shall make transfers of appropriation authority 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 management or the director of the legislative council. The office of management and budget shall cancel unexpended appropriations for the legislative assembly and legislative council enacted prior to the 2021-23 biennium as directed by the chairman of the legislative management or the director of the legislative council.

**SECTION 6. NEW AND VACANT FTE FUNDING POOL - BUDGET SECTION REPORT.**

1. The legislative council may not spend funds from the new and vacant FTE funding pool line item in section 1 of this Act, but may transfer funds from this line item to the salaries and wages line item as necessary to provide funding for:
  - a. Filling a new or vacant FTE position from the date of hire through the end of the biennium; or
  - b. Salaries and wages if actual salaries and wages savings from vacant positions are less than the estimate used by the sixty-eighth legislative assembly in the development of the appropriation.
2. The legislative council shall report to the budget section regarding the use of funding in the pool including information on:
  - a. New FTE positions, including the date hired;
  - b. Vacant FTE positions, including the dates the positions are vacated and filled; and
  - c. Additional salaries and wages funding needed due to savings from vacant positions being less than anticipated.
3. If funding in the funding pool line item is insufficient to provide the necessary salaries and wages funding for the biennium, the legislative council may request a deficiency appropriation from the sixty-ninth legislative assembly.

**SECTION 7. AMENDMENT.** Section 54-03-20 of the North Dakota Century Code is amended and reenacted as follows:

**54-03-20. Compensation and expense reimbursement of members of the legislative assembly.**

1. Each member of the legislative assembly is entitled to receive as compensation for services the sum of ~~one hundred eighty-nine~~two hundred

five dollars through June 30, ~~2022~~2024, and ~~one hundred ninety-three~~two hundred thirteen dollars thereafter 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.

2. a. Each member of the legislative assembly is entitled to receive reimbursement for lodging, which may not exceed per calendar month the amount established under this subdivision by the director of the office of management and budget for lodging in state 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 seventy 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 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.
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 the maximum monthly reimbursement allowed under subdivision a of subsection 2.

4. The amount to which each legislator is entitled must be paid following the organizational session in December and each month upon submission of a voucher and appropriate documentation during a regular or special session, consistent with section 26 of article XI of the constitution of North Dakota.
5. If during a special session, the legislative assembly adjourns for more than three days, a member of the legislative assembly is entitled to receive compensation during those days only while in attendance at a standing committee if the legislator is a member of that committee, a majority or minority leader, or a legislator who is not on that committee but who has the approval of a majority or minority leader to attend.
6. A day, or portion of a day, spent in traveling to or returning from an organizational, special, or regular session or a legislative committee meeting must be included as a calendar day during a legislative session or as a day of a legislative committee meeting for the purposes of this section.
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 five hundred ~~twenty-six~~sixty-nine dollars through June 30, ~~2022~~2024, and five hundred ~~thirty-seven~~ninety-two dollars thereafter per month, paid monthly.
  - 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 management, 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 ~~three hundred seventy-seven~~four hundred eight dollars through June 30, ~~2022~~2024, and ~~three hundred eighty-five~~four hundred twenty-four dollars thereafter per month during the biennium for their execution of public duties.
8. Attendance at any organizational, special, or regular session of the legislative assembly by any member is a conclusive presumption of entitlement as set out in this section and compensation and expense allowances must be excluded from gross income for income tax purposes to the extent permitted for federal income tax purposes under section 127 of the Economic Recovery Tax Act of 1981 [Pub. L. 97-34; 95 Stat. 202; 26 U.S.C. 162(i)].
9. Before each regular legislative session, the legislative management shall make recommendations and submit any necessary legislation to adjust legislative compensation amounts.

**SECTION 8. 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 legislative management and the members of any committee of the legislative management are entitled to be compensated for the time spent in attendance at sessions of the legislative management and of its committees at the rate of ~~one hundred eighty-nine~~two hundred five dollars

through June 30, ~~2022~~2024, and ~~one hundred ninety-three~~two hundred ~~thirteen~~ dollars thereafter 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 legislative management is entitled to receive an additional five dollars for each day spent in attendance at sessions of the legislative management and of its committees, and the chairman of each of the legislative management's committees is entitled to receive five dollars for each day spent in attendance at sessions of the legislative management or of the committee which the person chairs.

**SECTION 9. EMERGENCY.** Sections 1 through 5 of this Act are declared to be an emergency measure.

Approved April 20, 2023

Filed April 21, 2023

## CHAPTER 2

### HOUSE BILL NO. 1002

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the judicial branch; to amend and reenact sections 27-02-02, 27-05-03, and 27-09.1-14 of the North Dakota Century Code, relating to the salaries of justices of the supreme court, the salaries of district court judges, and compensation of jurors; to provide for transfers; to provide for a report; and to provide an exemption.

**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 the judicial branch, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

Subdivision 1.

**SUPREME COURT**

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$11,202,906	\$931,799	\$12,134,705
Operating expenses	2,350,094	846,665	3,196,759
Capital assets	0	28,500	28,500
New and vacant FTE funding pool	0	8,740,214	8,740,214
Guardianship monitoring program	<u>286,097</u>	<u>(286,097)</u>	<u>0</u>
Total all funds	\$13,839,097	\$10,261,081	\$24,100,178
Less estimated income	0	485,793	485,793
Total general fund	\$13,839,097	\$9,775,288	\$23,614,385

Subdivision 2.

**DISTRICT COURTS**

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$76,196,548	\$3,082,696	\$79,279,244
Operating expenses	20,081,881	4,442,738	24,524,619
Capital assets	0	1,125,220	1,125,220
Judges' retirement	<u>137,246</u>	<u>40,094</u>	<u>177,340</u>
Total all funds	\$96,415,675	\$8,690,748	\$105,106,423
Less estimated income	<u>756,963</u>	<u>71,427</u>	<u>828,390</u>
Total general fund	\$95,658,712	\$8,619,321	\$104,278,033

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	\$1,317,481	\$77,532	\$1,395,013
Total all funds	\$1,317,481	\$77,532	\$1,395,013
Less estimated income	<u>502,500</u>	<u>7,472</u>	<u>509,972</u>
Total general fund	\$814,981	\$70,060	\$885,041

Subdivision 4.

#### BILL TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$110,312,790	\$18,464,669	\$128,777,459
Grand total special funds	<u>1,259,463</u>	<u>564,692</u>	<u>1,824,155</u>
Grand total all funds	\$111,572,253	\$19,029,361	\$130,601,614
Full-time equivalent positions	362.00	21.00	383.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 biennium one-time funding items included in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Juvenile case management system	\$2,000,000	\$0
Information technology equipment	157,600	1,153,720
Federal department of justice grant	0	388,000
Docket management system	<u>2,020,000</u>	<u>0</u>
Total all funds	\$4,177,600	\$1,541,720
Less estimated income	<u>2,177,600</u>	<u>388,000</u>
Total general fund	\$2,000,000	\$1,153,720

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The supreme court shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. 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, 2023, and ending June 30, 2025.

**SECTION 4. EXEMPTION - TRANSFERS.** Notwithstanding section 54-16-04, the director of the office of management and budget shall transfer appropriation authority between line items and subdivisions in section 1 of this Act as 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 5. NEW AND VACANT FTE FUNDING POOL - BUDGET SECTION REPORT.**

1. The supreme court may not spend funding from the new and vacant FTE funding pool line item in subdivision 1 of section 1 of this Act, but may transfer funds from this line item to the salaries and wages line items within subdivisions 1 and 2 of this Act, and to the judicial conduction commission and disciplinary board line item within subdivision 3 of this Act, as necessary to provide funding for:
  - a. Filling a new or vacant FTE position from the date of hire through the end of the biennium; or
  - b. Salaries and wages if actual salaries and wages savings from vacant positions are less than the estimate used by the sixty-eighth legislative assembly in the development of the appropriation.
2. The supreme court shall report to the budget section regarding the use of funding in the pool, including information on:
  - a. New FTE positions, including the date hired;
  - b. Vacant FTE positions, including the dates the positions are vacated and filled; and
  - c. Additional salaries and wages funding needed due to savings from vacant positions being less than anticipated.
3. If funding in the new and vacant FTE funding pool line item is insufficient to provide the necessary salaries and wages funding for the biennium, the supreme court may request a deficiency appropriation from the sixty-ninth legislative assembly.

**SECTION 6. 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 sixty-five thousand eight hundred forty-five dollars through June 30, 2022, and one hundred sixty-nine thousand one hundred sixty-two~~ one hundred seventy-nine thousand three hundred twelve dollars through June 30, 2024, and one hundred eighty-six thousand four hundred eighty-four dollars thereafter. The chief justice of the supreme court is entitled to receive an additional ~~four thousand six hundred ninety dollars per annum through June 30, 2022, and four thousand seven hundred eighty-four~~ five thousand seventy-one dollars per annum through June 30, 2024, and five thousand two hundred seventy-four dollars per annum thereafter.

**SECTION 7. 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 fifty-two thousand one hundred seventy-five dollars through June 30, 2022, and one hundred fifty-five thousand two hundred nineteen~~ one hundred sixty-four thousand five hundred thirty-two dollars through June 30, 2024, and one hundred seventy-one thousand one hundred thirteen 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 ~~four thousand three hundred twenty-four dollars per annum through June 30, 2022, and four thousand four hundred ten~~four thousand six hundred seventy-five dollars per annum through June 30, 2024, and four thousand eight hundred sixty-two dollars thereafter.

**SECTION 8. 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~~one hundred dollars for each day of required attendance at sessions of the district court 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~~fifty 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 28, 2023

Filed April 29, 2023

## CHAPTER 3

### HOUSE BILL NO. 1003

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the North Dakota university system; to provide an appropriation to the Bank of North Dakota; to create and enact a new section to chapter 6-09, four new sections to chapter 15-10, section 15-10-48.2, and section 15-18.2-06.1 of the North Dakota Century Code, relating to an economic diversification research fund, matching grants for agricultural research and extension, the Bismarck state college polytechnic center, a report on higher education trends, disclosure of financial condition, and a minimum amount payable; to amend and reenact sections 15-10-38.1, 15-10-38.2, 15-10-38.3, subdivision c of subsection 1 of section 15-10-48, subdivision c of subsection 1 of section 15-10-49, subsection 2 of section 15-10-49, sections 15-10-57 and 15-10-63, subdivision k of subsection 1 of section 15-18.2-02, subsection 1 of section 15-18.2-05, section 15-54.1-02, subsection 1 of section 15-62.4-03, subdivision c of subsection 2 of section 54-07-12, and section 54-44.1-11 of the North Dakota Century Code, relating to the skilled workforce student loan repayment program, the skilled workforce scholarship program, matching grants for the advancement of academics, the workforce development council, higher education capital projects, state aid for institutions of higher education, the university system capital building fund, student financial assistance grants, the digitization of documents relating to Theodore Roosevelt, and the cancellation of unexpended appropriations; to repeal sections 15-10-48.1 and 15-10-58 of the North Dakota Century Code, relating to matching grants for legal education and the workforce education advisory council; to provide for a transfer; to provide for a legislative management study; to provide loan authorization for the Mayville state university old main project; to provide for a report; to provide an exemption; 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 state board of higher education and to the entities and institutions under the supervision of the board for the purpose of defraying the expenses of the state board of higher education and the entities and institutions under the control of the board, for the period beginning with the effective date of this Act, and ending June 30, 2025, as follows:

Subdivision 1.

**NORTH DAKOTA UNIVERSITY SYSTEM**

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Capital assets - bond payments	\$13,385,264	(\$2,187,368)	\$11,197,896
Competitive research programs	5,685,750	0	5,685,750
System governance	8,605,570	3,241,239	11,846,809

Core technology services	62,962,817	8,081,654	71,044,471
Student financial assistance grants	23,917,306	6,000,000	29,917,306
Professional student exchange program	3,699,342	0	3,699,342
Academic and CTE scholarships	16,216,749	1,000,000	17,216,749
Scholars program	1,807,115	0	1,807,115
Native American scholarship	555,323	444,677	1,000,000
Tribally controlled community college grants	1,000,000	400,000	1,400,000
Education incentive programs	260,000	0	260,000
Student mental health	284,400	0	284,400
Veterans' assistance grants	277,875	177,000	454,875
Shared campus services	800,000	0	800,000
Nursing education consortium	1,356,000	0	1,356,000
NASA EPSCoR	342,000	0	342,000
Education challenge fund	0	20,000,000	20,000,000
Dual-credit tuition scholarship	1,500,000	0	1,500,000
Dakota digital academy	0	450,000	450,000
Total all funds	\$142,655,511	\$37,607,202	\$180,262,713
Less estimated income	25,757,035	487,073	26,244,108
Total general fund	\$116,898,476	\$37,120,129	\$154,018,605
Full-time equivalent positions	158.83	4.00	162.83

## Subdivision 2.

## BISMARCK STATE COLLEGE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$100,571,387	\$7,699,688	\$108,271,075
Capital assets	1,922,561	43,900,000	45,822,561
Total all funds	\$102,493,948	\$51,599,688	\$154,093,636
Less estimated income	70,409,893	37,369,688	107,779,581
Total general fund	\$32,084,055	\$14,230,000	\$46,314,055
Full-time equivalent positions	332.90	2.43	335.33

## Subdivision 3.

## LAKE REGION STATE COLLEGE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$39,150,913	\$2,263,509	\$41,414,422
Capital assets	362,667	1,000,000	1,362,667
Total all funds	\$39,513,580	\$3,263,509	\$42,777,089
Less estimated income	25,271,428	2,257,339	27,528,767
Total general fund	\$14,242,152	\$1,006,170	\$15,248,322
Full-time equivalent positions	115.76	4.83	120.59

## Subdivision 4.

## WILLISTON STATE COLLEGE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$34,044,304	\$2,929,048	\$36,973,352
Capital assets	1,261,968	43,913,939	45,175,907

Total all funds	\$35,306,272	\$46,842,987	\$82,149,259
Less estimated income	<u>24,019,535</u>	<u>45,011,392</u>	<u>69,030,927</u>
Total general fund	\$11,286,737	\$1,831,595	\$13,118,332
Full-time equivalent positions	101.29	1.54	102.83

## Subdivision 5.

## UNIVERSITY OF NORTH DAKOTA

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$902,173,330	\$60,080,851	\$962,254,181
Capital assets	4,411,566	127,500,000	131,911,566
National security initiative	0	9,000,000	9,000,000
Research network	0	<u>2,500,000</u>	<u>2,500,000</u>
Total all funds	\$906,584,896	\$199,080,851	\$1,105,665,747
Less estimated income	<u>755,657,771</u>	<u>156,803,837</u>	<u>912,461,608</u>
Total general fund	\$150,927,125	\$42,277,014	\$193,204,139
Full-time equivalent positions	2,059.98	0.58	2,060.56

## Subdivision 6.

## NORTH DAKOTA STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$756,049,321	\$46,573,844	\$802,623,165
Capital assets	7,799,104	107,000,000	114,799,104
Minimum amount payable adjustment	0	4,800,000	4,800,000
Research network	0	<u>2,500,000</u>	<u>2,500,000</u>
Total all funds	\$763,848,425	\$160,873,844	\$924,722,269
Less estimated income	<u>625,417,100</u>	<u>135,106,551</u>	<u>760,523,651</u>
Total general fund	\$138,431,325	\$25,767,293	\$164,198,618
Full-time equivalent positions	1,829.43	38.07	1,867.50

## Subdivision 7.

## NORTH DAKOTA STATE COLLEGE OF SCIENCE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$95,547,465	\$5,686,699	\$101,234,164
Capital assets	1,012,379	19,975,000	20,987,379
Minimum amount payable adjustment	0	<u>1,005,347</u>	<u>1,005,347</u>
Total all funds	\$96,559,844	\$26,667,046	\$123,226,890
Less estimated income	<u>60,845,052</u>	<u>22,614,567</u>	<u>83,459,619</u>
Total general fund	\$35,714,792	\$4,052,479	\$39,767,271
Full-time equivalent positions	311.61	2.34	313.95

## Subdivision 8.

## DICKINSON STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$50,826,060	\$5,244,442	\$56,070,502
Capital assets	409,078	<u>20,600,000</u>	<u>21,009,078</u>

Total all funds	\$51,235,138	\$25,844,442	\$77,079,580
Less estimated income	<u>30,992,408</u>	<u>20,685,562</u>	<u>51,677,970</u>
Total general fund	\$20,242,730	\$5,158,880	\$25,401,610
Full-time equivalent positions	175.50	2.50	178.00

Subdivision 9.

#### MAYVILLE STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$50,603,276	\$6,818,561	\$57,421,837
Capital assets	358,992	17,330,087	17,689,079
Total all funds	\$50,962,268	\$24,148,648	\$75,110,916
Less estimated income	<u>32,282,440</u>	<u>19,379,666</u>	<u>51,662,106</u>
Total general fund	\$18,679,828	\$4,768,982	\$23,448,810
Full-time equivalent positions	230.35	(3.43)	226.92

Subdivision 10.

#### MINOT STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$104,154,777	\$10,794,119	\$114,948,896
Capital assets	<u>1,099,620</u>	<u>7,865,000</u>	<u>8,964,620</u>
Total all funds	\$105,254,397	\$18,659,119	\$123,913,516
Less estimated income	<u>64,047,767</u>	<u>10,588,652</u>	<u>74,636,419</u>
Total general fund	\$41,206,630	\$8,070,467	\$49,277,097
Full-time equivalent positions	403.04	20.59	423.63

Subdivision 11.

#### VALLEY CITY STATE UNIVERSITY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$50,083,400	\$5,135,290	\$55,218,690
Capital assets	<u>455,823</u>	<u>35,500,000</u>	<u>35,955,823</u>
Total all funds	\$50,539,223	\$40,635,290	\$91,174,513
Less estimated income	<u>26,377,846</u>	<u>37,184,575</u>	<u>63,562,421</u>
Total general fund	\$24,161,377	\$3,450,715	\$27,612,092
Full-time equivalent positions	202.77	9.17	211.94

Subdivision 12.

#### DAKOTA COLLEGE AT BOTTINEAU

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$23,640,055	\$2,227,163	\$25,867,218
Capital assets	114,007	5,300,000	5,414,007
Total all funds	\$23,754,062	\$7,527,163	\$31,281,225
Less estimated income	<u>14,216,200</u>	<u>5,934,747</u>	<u>20,150,947</u>
Total general fund	\$9,537,862	\$1,592,416	\$11,130,278
Full-time equivalent positions	91.86	(7.86)	84.00

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	\$218,253,058	\$19,850,819	\$238,103,877
Healthcare workforce initiative	10,676,150	0	10,676,150
Total all funds	\$228,929,208	\$19,850,819	\$248,780,027
Less estimated income	160,806,249	7,107,862	167,914,111
Total general fund	\$68,122,959	\$12,742,957	\$80,865,916
Full-time equivalent positions	492.67	(3.84)	488.83

Subdivision 14.

NORTH DAKOTA FOREST SERVICE

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Operations	\$15,343,065	\$9,318,100	\$24,661,165
Capital assets	118,728	0	118,728
Total all funds	\$15,461,793	\$9,318,100	\$24,779,893
Less estimated income	10,669,315	8,471,957	19,141,272
Total general fund	\$4,792,478	\$846,143	\$5,638,621
Full-time equivalent positions	28.00	1.00	29.00

Subdivision 15.

TOTAL - SECTION 1

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$686,328,526	\$162,915,240	\$849,243,766
Grand total special funds	1,926,770,039	509,003,468	2,435,773,507
Grand total all funds	\$2,613,098,565	\$671,918,708	\$3,285,017,273

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Capital projects - strategic investment and improvements fund	\$0	\$209,976,971
Capital project inflation - general fund	0	18,160,000
Capital projects - other funds	4,363,000	201,747,055
University of North Dakota national security initiative	0	9,000,000
North Dakota state university additional minimum amount payable adjustment	0	4,800,000
North Dakota state college of science additional minimum amount payable adjustment	0	1,005,347
Mayville state university discretionary funding	0	1,750,000
Bismarck state college polytechnic building and transition	38,000,000	0
University of North Dakota space command initiative	4,000,000	0

University of North Dakota airport apron	5,000,000	0
University of North Dakota Merrifield hall	50,000,000	0
University of North Dakota space education and research	10,000,000	0
North Dakota state university settlement agreement	125,000	0
North Dakota state university high-performance computing	1,600,000	0
North Dakota state university agricultural products development center	50,000,000	0
Dickinson state university Pulver hall and other projects	4,000,000	0
Mayville state university natural gas boiler project	1,600,000	0
Minot state university Hartnett hall	25,000,000	0
Valley City state university land purchase	309,000	0
Hyperbaric oxygen therapy	2,104,121	0
Math pathways	150,000	0
Higher education challenge grants	11,150,000	20,000,000
Dakota digital academy	475,000	450,000
Financial aid software	0	1,669,354
Total all funds	\$207,876,121	\$468,558,727
Total other funds	190,851,121	411,724,026
Total general fund	\$17,025,000	\$56,834,701

The 2023-25 one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The state board of higher education shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. ADDITIONAL FEDERAL, PRIVATE, AND OTHER FUNDS - APPROPRIATION - EXEMPTION.** All funds, in addition to those appropriated in section 1 of this Act, from federal, private, and other sources for competitive grants or other funds that the legislative assembly has not indicated the intent to reject, including tuition revenue, received by the state board of higher education and the institutions and entities under the control of the state board of higher education, are appropriated to the board and those institutions and entities, for the biennium beginning July 1, 2023, and ending June 30, 2025. All additional funds received under the North Dakota-Minnesota reciprocity agreement during the biennium beginning July 1, 2023, and ending June 30, 2025, are appropriated to the state board of higher education for reimbursement to institutions under the control of the board. Notwithstanding section 48-01.2-25, an institution receiving funds for capital projects in excess of the amounts appropriated in section 1 of this Act may spend those funds for the capital project.

**SECTION 4. USE OF EXTRAORDINARY REPAIRS FUNDING - MATCHING FUNDS.** The capital assets line items in subdivisions 2 through 12 of section 1 of this Act include funding from the general fund for institution extraordinary repairs. An institution, excluding the university of North Dakota and North Dakota state university, shall provide one dollar of matching funds from operations or other sources for each one dollar of extraordinary repairs funding used for a project. The university of North Dakota and North Dakota state university shall provide two dollars of matching funds from operations or other sources for each one dollar of extraordinary repairs funding used for a project.

**SECTION 5. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND.** The grand total special funds line item in subdivision 15 of section 1 of this Act includes \$209,976,971 from the strategic investment and improvements fund for capital projects as follows:

Williston state college medical health care building	\$27,962,053
University of North Dakota science, engineering, and national security corridor	57,400,000
North Dakota state university center for engineering and computational sciences	59,000,000
North Dakota state college of science agriculture, automation, and autonomous systems	18,975,000
Dickinson state university agriculture and technical education building	17,100,000
Mayville state university old main renovation	15,000,000
Minot state university Dakota hall demolition	765,000
Valley City state university McCarthy hall renovation	10,474,918
Dakota college at Bottineau old main renovation	3,300,000
Total strategic investment and improvements fund	\$209,976,971

**SECTION 6. TRANSFER - NORTH DAKOTA UNIVERSITY SYSTEM OFFICE - NORTH DAKOTA STATE UNIVERSITY.** Of the funding appropriated in subdivision 1 of section 1 of chapter 31 of the 2021 Session Laws for the biennium beginning July 1, 2021, and ending June 30, 2023, that is continued pursuant to section 54-44.1-11, the state board of higher education shall transfer \$367,000 to the operations line item in subdivision 6 of section 1 of this Act by August 1, 2023. The North Dakota university system office may not assess institutions under the control of the state board of higher education to recover the cost of this transfer.

**SECTION 7. TRANSFER - BANK OF NORTH DAKOTA PROFITS - STATE BOARD OF HIGHER EDUCATION SCHOLARSHIPS.** The industrial commission shall transfer to the North Dakota university system office a total of \$1,500,000 from the current earnings and accumulated undivided profits of the Bank of North Dakota during the biennium beginning July 1, 2023, and ending June 30, 2025, as requested by the commissioner of higher education. The estimated income line item in subdivision 1 of section 1 includes \$1,500,000 for the North Dakota university system office for dual-credit tuition scholarships.

**SECTION 8. TRANSFER - BANK OF NORTH DAKOTA PROFITS - SKILLED WORKFORCE STUDENT LOAN REPAYMENT PROGRAM FUND.** The industrial commission shall transfer the sum of \$3,400,000 from the current earnings and accumulated undivided profits of the Bank of North Dakota to the skilled workforce student loan repayment program fund during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 9. TRANSFER - BANK OF NORTH DAKOTA PROFITS - SKILLED WORKFORCE SCHOLARSHIP FUND.** The industrial commission shall transfer the sum of \$3,400,000 from the current earnings and accumulated undivided profits of the Bank of North Dakota to the skilled workforce scholarship fund during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 10. APPROPRIATION - BANK OF NORTH DAKOTA - TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - ECONOMIC DIVERSIFICATION RESEARCH FUND.** The office of management and budget shall transfer \$5,500,000 from the strategic investment and improvements fund to the economic diversification research fund, the sum of which is appropriated to the Bank of North Dakota for the purpose of providing grants to institutions under the control of the state board of higher education, for the biennium beginning July 1, 2023, and ending June 30, 2025, as requested by the commissioner of higher education.

**SECTION 11. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - UNIVERSITY SYSTEM CAPITAL BUILDING FUND.** The office of

management and budget shall transfer \$24,000,000 from the strategic investment and improvements fund to the university system capital building fund during the period beginning with the effective date of this Act, and ending June 30, 2025, as requested by the commissioner of higher education. Funding transferred pursuant to this section is to be allocated to each institution as follows:

	Tier II	Tier III	Total
Bismarck state college	\$638,540	\$500,000	\$1,138,540
Lake Region state college	266,062	500,000	766,062
Williston state college	206,920	500,000	706,920
University of North Dakota	6,542,702	2,250,000	8,792,702
North Dakota state university	4,349,394	2,250,000	6,599,394
North Dakota state college of science	751,042	500,000	1,251,042
Dickinson state university	403,293	500,000	903,293
Mayville state university	360,044	500,000	860,044
Minot state university	859,202	500,000	1,359,202
Valley City state university	463,705	500,000	963,705
Dakota college at Bottineau	<u>159,096</u>	<u>500,000</u>	<u>659,096</u>
Total	\$15,000,000	\$9,000,000	\$24,000,000

**SECTION 12. CAPITAL BUILDING FUNDS - USES.** The institutions listed may use funding from the respective institution's university system capital building fund allocation for the following projects authorized by the sixty-eighth legislative assembly:

Bismarck state college polytechnic project inflation	\$12,400,000
Lake region state college wind turbine gearbox replacement and parking lot repairs	1,000,000
Williston state college medical health care building	36,600,000
University of North Dakota science, engineering, and national security corridor	82,000,000
University of North Dakota Merrifield hall and Twamley hall	12,500,000
North Dakota state university center for engineering and computational sciences	84,000,000
North Dakota state college of science agriculture, automation, and autonomous systems	19,975,000
Dickinson state university agriculture and technical education building	18,000,000
Dickinson state university generator and project inflation	2,600,000
Mayville state university old main renovation	49,970,100
Minot state university Hartnett hall project inflation	4,000,000
Valley City state university McCarthy hall renovation	13,500,000
Dakota college at Bottineau old main renovation	<u>5,300,000</u>
Total	\$341,845,100

**SECTION 13. MAYVILLE STATE UNIVERSITY - OLD MAIN PROJECT - LOAN AUTHORIZATION.** The legislative assembly authorizes the Mayville state university old main renovation project to be funded in two phases as provided under this section. The capital assets line item in subdivision 9 of section 1 of this Act includes the sum of \$17,330,087, or so much of the sum as may be necessary, for phase 1 of the project. During the biennium beginning July 1, 2023, and ending June 30, 2025, and continuing into the biennium beginning July 1, 2025, and ending June 30, 2027, the state board of higher education may borrow the sum of \$34,924,814, or so much of the sum as may be necessary, from the Bank of North Dakota for completion of phase 2 of the Mayville state university old main renovation project. The state board of higher education shall seek funding from the sixty-ninth legislative assembly to repay the loan authorized under this section.

## **SECTION 14. CAMPUS CAPITAL PROJECTS - PROJECT REQUESTS - LEGISLATIVE INTENT.**

1. An institution must have pledged local matching funds allocated to a project prior to expending any funding from the strategic investment and improvements fund for the project.
2. If an institution is unable to provide the appropriated amount of matching funds for a capital project provided for in this Act, the institution may only spend a proportional amount of funding from the strategic investment and improvements fund for the project. If an institution is unable to provide necessary matching funds by June 30, 2027, to complete the project in whole or in part, the appropriation from the strategic investment and improvements fund must be canceled.
3. It is the intent of the sixty-eighth legislative assembly that any inflationary or other costs associated with previously approved projects must be paid from the institution's local funds or the institution's allocation in the university system capital building fund.

## **SECTION 15. CAMPUS CAPITAL PROJECTS - PROJECT MANAGEMENT.**

During the biennium beginning July 1, 2023, and ending June 30, 2025, each capital project authorized by the state board of higher education must have adequate project management oversight by either an institution official or a representative of an external entity. An institution may seek assistance from the university system office for project management oversight of a capital project.

**SECTION 16.** A new section to chapter 6-09 of the North Dakota Century Code is created and enacted as follows:

### **Economic diversification research fund - Report to legislative management.**

1. There is created in the state treasury the economic diversification research fund. The fund consists of all moneys deposited in or transferred to the fund pursuant to legislative action. Moneys in the fund may be spent by the Bank of North Dakota pursuant to legislative appropriations to provide grants to institutions under the control of the state board of higher education for economic diversification research.
2. In consultation with representatives of North Dakota state university and the university of North Dakota, the Bank, in consultation with the state board of higher education, shall award grants to institutions under the control of the state board of higher education. The sum of five million dollars must be awarded to North Dakota state university and the university of North Dakota with equal amounts awarded to each institution. The remaining funding must be awarded to the other institutions under the control of the state board of higher education, as determined by the board. The state board of higher education may not award more than fifty percent of the available funding during the first year of the biennium. The Bank of North Dakota shall distribute the grant funding as awarded by the state board of higher education.
3. The state board of higher education shall develop guidelines for the economic diversification research grants. The purpose of the grants is to stimulate economic activity across the state through innovation of new technology, concepts, and products; to promote job creation and career and wage growth; to enhance health care outcomes; to address loss of revenue and jobs in

communities with economies that depend primarily on the fossil fuel industry; and to provide experiential learning opportunities for students. Research projects may be initiated by an institution under the control of the state board of higher education or by the private sector. The guidelines must include consideration for research projects with matching funds and provisions for grant oversight by an internal advisory committee and an external advisory committee.

4. The state board of higher education shall develop reporting requirements for the institutions under the control of the board. The reporting requirements must include criteria for assessing performance outcomes related to the grants. The state board of higher education shall compile the reports and submit a comprehensive report annually to the legislative management. The comprehensive report must include information on how the research efforts by each institution align with the state's priorities, how the institutions collaborate when appropriate, and how the outcomes of the research meet established performance expectations.

**SECTION 17.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

**State commissioner of higher education - Higher education trends - Report to legislative management.**

The state commissioner of higher education shall provide an annual report to the legislative management regarding trends in higher education, including state and regional student enrollment, North Dakota university system institution reserves, state and regional tuition rates, state and regional student financial assistance, and the North Dakota university system's response to the trends and changes, including new or expanded educational programs, closed programs, and future budget requests.

**SECTION 18.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

**Disclosure of financial condition.**

The state board of higher education shall provide a disclosure of the financial condition of an institution to the qualified applicants designated as finalists pursuant to section 44-04-18.27 for the position of president of an institution. The disclosure of financial condition must identify the institution's reserves, recent audit findings, anticipated future funding changes pursuant to chapter 15-18.2, and the institution's composite financial index ratio. The state board of higher education may require the qualified applicants to sign a nondisclosure agreement prior to receiving the disclosure of financial condition.

**SECTION 19.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

**Campus policies and procedures.**

The president of an institution under the control of the state board of higher education may adopt policies, procedures, and directives for the institution, with input but no authoritative control from faculty and others through shared governance. The commissioner of higher education and the state board of higher education may overturn or amend the president's policies, procedures, and directives.

**SECTION 20.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

**Larry C. Skogen polytechnic institute.**

The polytechnic center constructed on the campus of Bismarck state college is officially named the Larry C. Skogen polytechnic institute.

**SECTION 21. AMENDMENT.** Section 15-10-38.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-38.1. Skilled workforce student loan repayment program - Skilled workforce student loan repayment program fund - Continuing appropriation - Report. (~~Repealed effective July 1, 2023~~)**

1. There is created in the state treasury the skilled workforce student loan repayment program fund. The fund consists of moneys transferred into the fund by the legislative assembly, matching funds received, and loan repayments. Moneys in the fund are appropriated to the state board of higher education on a continuing basis for the purpose of distributing student loan repayment grants directly to the Bank of North Dakota or other participating lender to repay outstanding student loan principal balances for eligible applicants. The state board of higher education may transfer money between this fund and the skilled workforce scholarship fund established in section 15-10-38.2.
2. The state board of higher education shall adopt policies and procedures to develop, implement, promote, and administer a skilled workforce student loan repayment program in cooperation with the Bank of North Dakota and the North Dakota workforce development council with the intent of attracting and retaining individuals for professional or technical skills in high demand in this state.
3. The North Dakota workforce development council in cooperation with job service North Dakota shall use available labor market information to determine annually the eligible high-demand professional and technical skills and emerging occupations in this state.
4. Graduates of degree or certificate programs from institutions or entities in any state may apply for the skilled workforce student loan repayment program. To be eligible to receive student loan repayment grants under the program, the applicant:
  - a. Must have successfully completed an educational program from an institution of higher education;
  - b. Must have a student loan with the Bank of North Dakota or other participating lender;
  - c. Following completion of an educational program, must reside and work in this state in an eligible high-demand or emerging occupation; and
  - d. Must have met and shall continue to meet any requirements established in applicable state board of higher education procedures.

5. The state board of higher education shall adopt procedures to ensure compliance with residency and occupation requirements after completion of the educational program.
6. The state board of higher education shall distribute student loan repayment grants from the skilled workforce student loan repayment program fund directly to the Bank of North Dakota or other participating lender to repay outstanding student loan principal balances for eligible applicants. The maximum annual student loan repayment grant amount for which an applicant may qualify is five thousand six hundred sixty-seven dollars, or one-third of the applicant's outstanding student loan principal balance upon initial application for the program, whichever is less. The maximum total student loan repayment grant amount for which any applicant may qualify is seventeen thousand dollars.
7. If an individual is receiving loan forgiveness under any other state program, the individual may not receive a student loan repayment grant under this section during the same application year. ~~An individual who received a skilled workforce scholarship under section 15-10-38.2 is not eligible for loan forgiveness under this section.~~
8. An individual may receive a combined total of no more than seventeen thousand dollars under this section and the skilled workforce scholarship program under section 15-10-38.2.
9. ~~The skilled workforce student loan repayment program must be a joint public and private effort.~~ The state board of higher education shall provide one dollar of funding for each one dollar of funding funds raised from the private sector or other public sources. Any matching funds received must be deposited in the skilled workforce student loan repayment program fund.
10. The state board of higher education shall provide a biennial program report to the legislative management by September first of each even-numbered year. The report must include information regarding:
  - a. The eligible high-demand professional and technical skills and emerging occupations;
  - b. The number of applicants, eligible applicants, and applicants receiving awards;
  - c. The amount of ~~private funding~~ matching funds raised; and
  - d. The average and total amounts awarded under the program.

**SECTION 22. AMENDMENT.** Section 15-10-38.2 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-38.2. Skilled workforce scholarship program - Skilled workforce scholarship fund - Continuing appropriation - Report. (Repealed effective July 1, 2023)**

1. There is created in the state treasury the skilled workforce scholarship fund. The fund consists of moneys transferred into the fund by the legislative assembly, matching funds received, and scholarship repayments. Moneys in the fund are appropriated to the state board of higher education on a

continuing basis for the purpose of providing grants to institutions of higher education related to skilled workforce scholarships. Institutions of higher education include institutions under the control of the state board of higher education, North Dakota nonpublic accredited institutions of higher education, tribally controlled community colleges, state-approved educator training programs, and North Dakota institutions approved to operate by the North Dakota board of career and technical education. The state board of higher education may transfer money between this fund and the skilled workforce student loan repayment program fund established in section 15-10-38.1.

2. The state board of higher education shall adopt policies and procedures to develop, implement, promote, and administer a skilled workforce scholarship program in cooperation with the Bank of North Dakota and the North Dakota workforce development council with the intent of attracting and retaining individuals for professional or technical skills in high demand in this state.
3. The North Dakota workforce development council in cooperation with job service North Dakota shall use available labor market information to determine annually the eligible high-demand professional and technical skills and emerging occupations in this state.
4. The state board of higher education and the workforce development council shall compile a list of qualifying educational programs annually. A qualifying educational program is a program resulting in attainment of an associate's degree or lower credential ~~upon successful completion of a program that may be completed within four semesters or six quarters, or the final two years of a baccalaureate program.~~ A qualifying educational program also must pertain to the professional and technical skills and emerging occupations in high demand in this state, as determined under subsection 3. Qualifying educational programs may include degree or certificate programs.
5. Individuals enrolled in a qualifying educational program in this state may apply for a scholarship under this section. Scholarships are limited to the amount charged each quarter, semester, or term by the educational institution for the tuition, fees, books, and supplies required for the qualifying educational program. The scholarships are intended to supplement any other scholarship or financial aid grant received by a student to assist the student with the costs of the qualifying educational program. An individual may not receive a combined total exceeding seventeen thousand dollars under this section and the skilled workforce loan repayment program under section 15-10-38.1.
6. To be eligible for a scholarship and payment under this section, a student must be enrolled full time in an eligible program and have at least a 2.5 cumulative grade point average, based on a 4.0 grading system, or maintain academic progress in the program according to program requirements. A student may not receive scholarships under this section for more than the equivalent of four semesters of full-time enrollment or six quarters of full-time enrollment.
7. Upon completion of a qualifying educational program, a student who received a scholarship under this section must reside and work in this state in an eligible high-demand or emerging occupation for a minimum of three years.
8. An individual shall repay the scholarship pursuant to the terms in the individual's scholarship award agreement if the individual fails to maintain

either a 2.5 cumulative grade point average or academic progress according to program requirements while enrolled, withdraws voluntarily or involuntarily before the completion of the program for which a scholarship has been received, or fails to reside and work in this state in an eligible high-demand or emerging occupation for at least three years following degree or certificate completion.

9. The state board of higher education, in conjunction with the Bank of North Dakota, may allow an individual who received payment under this section to delay or cancel repayment under this section due to financial difficulty, military service, death, or total disability.
10. Each quarter, semester, or term, the state board of higher education shall distribute grants to institutions of higher education to provide the amounts necessary for the scholarships awarded to the students enrolled in each institution.
11. ~~The skilled workforce scholarship program must be a joint public and private effort. The state board of higher education may distribute grants only to the extent that the private sector has provided one dollar of matching funds for each dollar of funding provided by the state. The state board of higher education shall provide one dollar of funding for each one dollar raised from the private sector or other public sources. Any matching funds received must be deposited in the skilled workforce scholarship fund.~~
12. The state board of higher education shall provide a biennial program report to the legislative management by September first of each even-numbered year. The report must include information regarding:
  - a. The eligible high-demand professional and technical skills and emerging occupations;
  - b. The qualifying educational programs;
  - c. The number of applicants, eligible applicants, and applicants receiving awards;
  - d. The amount of ~~private funding~~matching funds raised; and
  - e. The average and total amounts awarded under the program.

**SECTION 23. AMENDMENT.** Section 15-10-38.3 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-38.3. Scholarship and loan forgiveness administrative costs — Continuing appropriation. (Effective through July 31, 2023)**

The state board of higher education shall retain up to one and one-half percent of any funds appropriated to the board under subsection 1 of section 15-10-38.1 and subsection 1 of section 15-10-38.2. The retained funds must be used for promotion and administration of the programs under those sections.

~~**Scholarship and loan forgiveness administrative costs — Continuing appropriation. (Effective after July 31, 2023)**~~ The state board of higher education shall retain up to one-half of one percent of any funds appropriated to the board under

~~subsection 1 of section 15-10-38.1 and subsection 1 of section 15-10-38.2. The retained funds must be used for administration of the programs under those sections.~~

**SECTION 24. AMENDMENT.** Subdivision c of subsection 1 of section 15-10-48 of the North Dakota Century Code is amended and reenacted as follows:

- c. ~~The board may award up to one million seven hundred thousand~~two million seven hundred thousand dollars in matching grants each to the university of North Dakota and North Dakota state university; and up to ~~one million five hundred thousand~~two million two hundred thousand dollars in matching grants for projects ~~at~~to the university of North Dakota school of medicine and health sciences. Of the amount available to the university of North Dakota, two hundred fifty thousand dollars must be awarded for projects dedicated to projects at the school of law.

**SECTION 25.** Section 15-10-48.2 of the North Dakota Century Code is created and enacted as follows:

**Agricultural research and extension - Matching grants - North Dakota state university agricultural experiment station.**

1.
  - a. Subject to legislative appropriations, each biennium the state board of higher education shall award one dollar in matching grants for every two dollars raised by the institutional foundation of North Dakota state university for projects dedicated exclusively to agricultural research and extension at the agricultural experiment station. Notwithstanding section 15-10-53, awards under this section may be used for endowments, operations, facility repair projects, and new capital construction projects.
  - b. To be eligible for a matching grant, the institution shall demonstrate:
    - (1) Its foundation has raised at least twenty-five thousand dollars in cash or monetary pledges for a qualifying project; and
    - (2) The project has been approved by the grant review committee established in section 15-10-51.
  - c. The board may award up to two million two hundred thousand dollars in matching grants under this section.
  - d. If the remaining dollars are insufficient to provide a matching grant in the amount of one dollar for every two dollars raised by the institutional foundation, the board shall award a lesser amount.
2. The state board of higher education shall retain up to one-quarter of one percent of any grant awarded under this section to assist with the administrative expenses incurred in the grant review process.

**SECTION 26. AMENDMENT.** Subdivision c of subsection 1 of section 15-10-49 of the North Dakota Century Code is amended and reenacted as follows:

- c. The board may award up to:
- (1) ~~Nine hundred fifty thousand~~One million seven hundred thousand dollars each to Bismarck state college, Minot state university, and the North Dakota state college of science;

- (2) ~~Seven hundred thousand~~ One million one hundred thousand dollars each to Dickinson state university, Mayville state university, and Valley City state university; and
- (3) ~~Three hundred fifty thousand~~ Six hundred thousand dollars each to Dakota college at Bottineau, Lake Region state college, and Williston state college.

**SECTION 27. AMENDMENT.** Subsection 2 of section 15-10-49 of the North Dakota Century Code is amended and reenacted as follows:

2. a. If any available dollars have not been awarded by the board before January first of each odd-numbered year, in accordance with subsection 1, any institution listed in subsection 1 may apply for an additional matching grant.
- b. An application submitted under this subsection must meet the same criteria as an original application.
- c. The board shall prioritize available dollars allocated in paragraph 1 of subdivision c of subsection 1 to applicants in paragraph 1 of subdivision c of subsection 1. The board shall prioritize available dollars allocated in paragraph 2 of subdivision c of subsection 1 to applicants in paragraph 2 of subdivision c of subsection 1. The board shall prioritize available dollars allocated in paragraph 3 of subdivision c of subsection 1 to applicants in paragraph 3 of subdivision c of subsection 1.
- d. After considering applications pursuant to subdivision c, the board shall consider each application submitted under this subsection in chronological order.
- d-e. If the remaining dollars are insufficient to provide a matching grant in the amount of one dollar for every two dollars raised by the institutional foundation, the board shall award a lesser amount.

**SECTION 28. AMENDMENT.** Section 15-10-57 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-57. Unified workforce, vocational, and technical education program system.**

The state board of higher education shall establish and maintain a unified system to offer workforce training, vocational education, and technical education programs at institutions under its control. The board shall periodically review programs offered by institutions under its control and revise program offerings based on the workforce needs of the state identified by the ~~workforce education advisory~~ development council. The board shall develop administrative arrangements that make possible the efficient use of facilities and staff. The board shall limit administrative costs by eliminating duplicative administrative positions.

**SECTION 29. AMENDMENT.** Section 15-10-63 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-63. Capital projects.**

1. The university of North Dakota and North Dakota state university shall identify other funds from gifts, grants, donations, the university system capital building fund, or other local funds for at least thirty percent of the total estimated cost of a capital project request submitted to the legislative assembly.
2. Bismarck state college, lake region state college, Williston state college, the North Dakota state college of science, Dickinson state university, Mayville state university, Minot state university, Valley City state university, and Dakota college at Bottineau shall identify other funds from gifts, grants, donations, the university system capital building fund, or other local funds for at least five percent of the total estimated cost of a capital project request submitted to the legislative assembly.
3. An institution under the control of the state board of higher education may undertake a facility renovation project only if the project will reduce the deferred maintenance amount of the facility by no less than seventy five percent of the total cost of the renovation. The institution shall maintain documentation that demonstrates the cost and scope of the deferred maintenance reduction that results directly from the renovation. This subsection does not apply to projects undertaken solely to correct building code deficiencies or to installations of infrastructure determined by the board to be essential to the mission of the institution.
- 2-4. Facility construction and renovation projects undertaken by an institution under the control of the state board of higher education must conform to campus master plan and space utilization requirements approved by the state board of higher education.

**SECTION 30. AMENDMENT.** Subdivision k of subsection 1 of section 15-18.2-02 of the North Dakota Century Code is amended and reenacted as follows:

- k. The ~~factors~~factor for credits completed in career and technical education are:
  - (1) ~~3-0 for lower division credits; and~~
  - (2) ~~5-0 for upper division credits~~5.0.

**SECTION 31. AMENDMENT.** Subsection 1 of section 15-18.2-05 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided under subsections 2 and 3, to determine the state aid payment to which each institution under its control is entitled, the state board of higher education shall multiply the product determined under section 15-18.2-03 by a base amount of:
  - a. ~~\$61.84~~\$73.15 in the case of North Dakota state university and the university of North Dakota;
  - b. ~~\$92.60~~\$103.76 in the case of Dickinson state university, Mayville state university, Minot state university, and Valley City state university; and
  - c. ~~\$98.84~~\$110.38 in the case of Bismarck state college, Dakota college at Bottineau, Lake Region state college, North Dakota state college of science, and Williston state college.

**SECTION 32.** Section 15-18.2-06.1 of the North Dakota Century Code is created and enacted as follows:

**Base funding - Minimum amount payable.**

Notwithstanding any calculations required by this chapter, during each biennium an institution may not receive less than ninety-six percent of the state aid to which the institution was entitled under this chapter during the previous biennium.

**SECTION 33. AMENDMENT.** Section 15-54.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**15-54.1-02. Capital building funds - Uses - Reports.**

Subject to tier II and tier III capital building fund matching requirements under this chapter, each institution may use its allocation of funds from the university system capital building fund for projects specifically authorized by the legislative assembly to use university system capital building fund moneys. In addition, after an institution has matched and committed seventy-five percent of the funding appropriated for the institution's tier I extraordinary repairs and subject to state board of higher education approval and matching requirements under this chapter, each institution may use its allocation of funds from the university system capital building fund for extraordinary repairs and deferred maintenance projects for academic and student housing facilities that do not increase the overall square footage of a building. The state board of higher education shall report biennially to the legislative management and to the appropriations committees of the legislative assembly on the use of funding in the university system capital building fund, the source of matching funds, and each institution's five-year plan for capital construction spending.

**SECTION 34. AMENDMENT.** Subsection 1 of section 15-62.4-03 of the North Dakota Century Code is amended and reenacted as follows:

1. The state board of higher education shall provide to each eligible student a financial assistance grant in an amount not exceeding:
  - a. One thousand ~~one hundred~~three hundred seventy-five dollars per semester; or
  - b. ~~Seven hundred thirty-three~~Nine hundred seventeen dollars per quarter.

**SECTION 35. AMENDMENT.** Subdivision c of subsection 2 of section 54-07-12 of the North Dakota Century Code is amended and reenacted as follows:

- c. The private entity agrees to donate ten million dollars from the one hundred million dollars identified in subsection 1 to a higher education institution foundation in North Dakota, of which two million dollars is for the purpose of creating an endowment to digitize digitizing documents relating to Theodore Roosevelt and eight million dollars is for the purpose of creating an endowment for the creation of purpose of digitizing documents relating to Theodore Roosevelt and for creating a Theodore Roosevelt conservation scholars program and related academic mission at a North Dakota higher education institution in collaboration with the private entity; and

**SECTION 36. AMENDMENT.** Section 54-44.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.1-11. Office of management and budget to cancel unexpended appropriations - When they may continue. (Effective through July 31, 20232025)**

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.

**Office of management and budget to cancel unexpended appropriations - When they may continue. (Effective after July 31, 20232025)** 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 37. REPEAL.** Sections 15-10-48.1 and 15-10-58 of the North Dakota Century Code are repealed.

**SECTION 38. EXEMPTION - TRANSFER AUTHORITY - LEGISLATIVE MANAGEMENT REPORT.** Notwithstanding section 54-16-04, the office of management and budget shall transfer appropriation authority from the operations to the capital assets line items within subdivisions 2 through 14 of section 1 of this Act as requested by the state board of higher education for the biennium beginning July 1, 2023, and ending June 30, 2025. The board shall report any transfer of funds under this section to the legislative management.

**SECTION 39. EXEMPTION - 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 during the biennium beginning July 1, 2023, and ending June 30, 2025. The North Dakota university system shall report any adjustments to the office of management and budget as part of the submission of the 2025-27 biennium budget request.

**SECTION 40. EXEMPTION - CAPITAL BUILDING FUND.** Notwithstanding any matching requirements in chapter 15-54.1, the following projects are authorized to use funding from the respective institution's allocation in the university system capital building fund:

Lake region state college wind turbine gearbox replacement and parking lot repairs	\$1,000,000
Williston state college medical health care building	637,947
Mayville state university old main renovation	2,330,087
Valley City state university McCarthy hall renovation	1,025,082
Dakota college at Bottineau old main renovation	<u>1,000,000</u>
Total	\$5,993,116

**SECTION 41. EXEMPTION - PROJECT AUTHORIZATIONS.** Any unexpended amounts remaining from the \$49,900,000 appropriated from the general fund for capital projects at institutions under the control of the state board of higher education in section 2 of chapter 53 of the 2019 Session Laws are not subject to section 54-44.1-11 and any unexpended funds from the appropriations are available to the respective institutions to complete the projects during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 42. EXEMPTION - FEDERAL STATE FISCAL RECOVERY FUND.** The amounts appropriated from federal funds derived from the state fiscal recovery fund

to the state board of higher education and institutions under the control of the state board of higher education in section 1 of chapter 548 and section 1 of chapter 550 of the 2021 Special Session Laws are not subject to section 54-44.1-11 and any unexpended funds from these projects and programs are available for the projects and programs, including for the Twamley hall project at the university of North Dakota, during the period beginning with the effective date of this Act, and ending June 30, 2025.

**SECTION 43. LEGISLATIVE MANAGEMENT STUDY - DUAL-CREDIT FUNDING.** During the 2023-24 interim, the legislative management shall study funding for dual-credit courses. The study must include a review of all funding sources relating to dual-credit courses in the state, including tuition and fees, the higher education funding formula, elementary and secondary education integrated formula payments, institution scholarships, state scholarships, and the Bank of North Dakota. The study must also include a review of funding for dual-credit courses in other states. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 44. LEGISLATIVE MANAGEMENT STUDY - ARTIFICIAL INTELLIGENCE IMPACTS.** During the 2023-24 interim, the legislative management shall consider studying the emergence of artificial intelligence and the potential impacts on the state's institutions, agencies, businesses, citizens, and youth. The study must include a review of the effect of artificial intelligence on the provision of health care, effects on student learning, potential opportunities or threats to the integrity of state services, the potential impact on electoral processes, including mitigating action to be taken leading up to the 2024 state elections, opportunities for state investment or policy changes to promote artificial intelligence businesses, and cybersecurity implications across all state institutions. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 45. TUITION RATE INCREASE LIMITATIONS.**

1. Except as provided in this section, notwithstanding any other provision of law, the state board of higher education may not increase tuition rates for resident students attending institutions of higher education under its control during the 2023-24 academic year as compared to the tuition rate in effect during the 2023 spring semester.
2. Except as provided in this section, notwithstanding any other provision of law, the state board of higher education may not increase tuition rates for resident students attending institutions of higher education under its control during the 2024-25 academic year as compared to the tuition rate in effect during the 2024 spring semester.
3. Tuition rates charged for high-cost undergraduate differentiated tuition programs and for graduate level programs, including programs offered through the university of North Dakota school of medicine and health sciences, the university of North Dakota school of law, or the North Dakota state university school of pharmacy, may be increased by up to one percent for the 2023-24 academic year as compared to the tuition rate in effect during the 2023 spring semester.
4. Tuition rates charged for high-cost undergraduate differentiated tuition programs and for graduate level programs, including programs offered

through the university of North Dakota school of medicine and health sciences, the university of North Dakota school of law, or the North Dakota state university school of pharmacy, may be increased by up to one percent for the 2024-25 academic year as compared to the tuition rate in effect during the 2024 spring semester.

- 5. This section does not apply to tuition rates for nonresident students attending institutions of higher education under the control of the state board of higher education. For purposes of this section, the residency of students for tuition purposes must be determined under section 15-10-19.1.
- 6. This section does not apply to tuition rates determined under tuition reciprocity agreements entered into by the state board of higher education with other states or state education compacts.
- 7. For purposes of this section, an institution must calculate a resident tuition rate increase based on the tuition rate paid by an average full-time resident student.

**SECTION 46. LEGISLATIVE INTENT - WEIGHTED CREDIT-HOURS - INSTRUCTIONAL PROGRAM CLASSIFICATION FACTORS.** It is the intent of the sixty-eighth legislative assembly that dental hygienist and dental assistant courses be transferred to the career and technical education instructional program classification within the higher education funding formula.

**SECTION 47. CAMPUS CAPITAL PROJECTS - 2025-27 BIENNIUM - LEGISLATIVE INTENT.** It is the intent of the sixty-eighth legislative assembly that the sixty-ninth legislative assembly appropriate funding from state funds or bond proceeds as follows for capital projects, in addition to any necessary authorization for the use of local matching funds, for the biennium beginning July 1, 2025, and ending June 30, 2027:

University of North Dakota science, technology, engineering, and math building	\$55,640,000
Minot state university academic building	8,132,000
Mayville state university old main renovation or loan repayment	<u>34,924,814</u>
Total legislative intent	\$98,696,814

**SECTION 48. EMERGENCY.** Sections 5, 11, 12, 14, 34, 40, 42, and the capital assets line items in section 1 of this Act are declared to be an emergency measure.

Approved May 8, 2023

Filed May 9, 2023

## CHAPTER 4

### HOUSE BILL NO. 1004

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the public health division of the department of health and human services; to create and enact a new section to chapter 54-27 of the North Dakota Century Code, relating to the deposit of judgment funds; to provide for a legislative management report; to provide for a transfer; and to provide for an exemption.

#### 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 health and human services for the purpose of defraying the expenses of the public health division of the department, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$41,362,968	\$3,830,044	\$45,193,012
Operating expenses	31,242,543	6,478,670	37,721,213
Capital assets	1,796,393	(326,613)	1,469,780
Grants	55,812,575	15,857,570	71,670,145
Tobacco prevention	13,410,022	814,235	14,224,257
Women, infants, and children food payments	19,900,000	0	19,900,000
COVID-19	4,459,766	93,280,500	97,740,266
Public health laboratory capital project	<u>0</u>	<u>55,120,000</u>	<u>55,120,000</u>
Total all funds	\$167,984,267	\$175,054,406	\$343,038,673
Less estimated income	<u>129,409,112</u>	<u>168,895,106</u>	<u>298,304,218</u>
Total general fund	\$38,575,155	\$6,159,300	\$44,734,455
Full-time equivalent positions	210.50	5.00	215.50

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Vital records system technology upgrades	\$275,000	\$0
Statewide health strategies initiative	3,000,000	0
COVID-19 response	9,262,341	0
Forensic examiner upgrades	910,000	0
COVID-19 response - House Bill No. 1395	87,290,597	0
Public health laboratory capital project	<u>15,000,000</u>	<u>55,120,000</u>
Total all funds	\$115,737,938	\$55,120,000

Less estimated income	<u>110,209,662</u>	<u>55,120,000</u>
Total general fund	\$5,528,276	\$0

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The department of health and human services shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. FUNDING TRANSFERS - EXEMPTION - AUTHORIZATION - REPORT.** Notwithstanding section 54-16-04, the director of the office of management and budget shall transfer appropriation authority between line items within section 1 of this Act, subdivisions 1, 2, and 3 of section 1 of Senate Bill No. 2012, and any other appropriation authority for the department of health and human services approved by the sixty-eighth legislative assembly for the biennium beginning July 1, 2023, and ending June 30, 2025, as requested by the department of health and human services. The department of health and human services shall notify the legislative council of any transfer made pursuant to this section. The department shall report to the budget section after June 30, 2024, any transfer made in excess of \$50,000 and to the appropriations committees of the sixty-ninth legislative assembly regarding any transfers made pursuant to this section.

**SECTION 4. FUNDING TRANSFERS - EXEMPTION - AUTHORIZATION - REPORT.** Notwithstanding section 54-16-04, the director of the office of management and budget shall transfer appropriation authority from line items within section 1 of this Act, subdivisions 1, 2, and 3 of Senate Bill No. 2012, and any other appropriation authority for the department of health and human services approved by the sixty-eighth legislative assembly to subdivision 4 of Senate Bill No. 2012, for the biennium beginning July 1, 2023, and ending June 30, 2025, as requested by the department of health and human services. The department of health and human services shall notify the legislative council of any transfer made pursuant to this section. The department shall report to the budget section after June 30, 2024, any transfer made in excess of \$50,000 and to the appropriations committees of the sixty-ninth legislative assembly regarding any transfers made pursuant to this section.

**SECTION 5. TRANSFER OF APPROPRIATION AUTHORITY.** Section 1 of this Act and section 1 of Senate Bill No. 2012 includes appropriation authority for the department of health and human services for the biennium beginning July 1, 2023, and ending June 30, 2025. On July 1, 2023, the office of management and budget shall combine the appropriation authority contained in section 1 of this Act and section 1 of Senate Bill No. 2012, and any other appropriation authority for the department of health and human services in other bills approved by the sixty-eighth legislative assembly, into one budget for the department of health and human services. The department of health and human services shall submit one budget request for the biennium beginning July 1, 2025, and ending June 30, 2027.

**SECTION 6. ESTIMATED INCOME - INSURANCE TAX DISTRIBUTION FUND.** The estimated income line item in section 1 of this Act includes the sum of \$1,125,000 from the insurance tax distribution fund for rural emergency medical services grants.

**SECTION 7. ESTIMATED INCOME - COMMUNITY HEALTH TRUST FUND.** The estimated income line item in section 1 of this Act includes the sum of \$20,837,620 from the community health trust fund for the following programs:

Behavioral risk factor survey	\$200,000
Behavioral health loan repayment	234,500

Domestic violence offender treatment	1,000,000
Domestic violence prevention	1,000,000
Women's way	329,500
Dentists' loan repayment	360,000
Local public health state aid	3,275,000
Cancer programs	580,324
Forensic examiner contract	1,000,000
Tobacco cessation grants	500,000
Youth vaping prevention grants	300,000
Tobacco prevention and control	5,043,000
Tobacco prevention and control grants to local public health units	<u>6,250,000</u>
Total community health trust fund	
\$20,072,324	

**SECTION 8. ESTIMATED INCOME - FEDERAL STATE FISCAL RECOVERY FUND.** The estimated income line item in section 1 of this Act includes the sum of \$55,120,000 from federal funds derived from the state fiscal recovery fund for a public health laboratory capital project.

**SECTION 9.** A new section to chapter 54-27 of the North Dakota Century Code is created and enacted as follows:

**Deposit of JUUL Labs, Inc., judgment funds.**

Eighty percent of any funds received by the state under the consent judgment adopted by the south central judicial district court in its consent judgment entered December 8, 2022, [Civil No. 08-2022-CV-02972] in State of North Dakota, ex rel. Drew H. Wrigley v. JUUL Labs, Inc., must be deposited in the community health trust fund.

**SECTION 10. TRANSFER - ATTORNEY GENERAL REFUND FUND TO COMMUNITY HEALTH TRUST FUND.** The attorney general shall transfer eighty percent of any funds deposited in the attorney general refund fund during the biennium beginning July 1, 2021, and ending June 30, 2023, relating to the consent judgment entered December 8, 2022, [Civil No. 08-2022-CV-02972] in State of North Dakota, ex rel. Drew H. Wrigley v. JUUL Labs, Inc., to the community health trust fund on July 1, 2023.

**SECTION 11. USE OF PUBLIC HEALTH CRISIS RESPONSE GRANT FUNDS.** The public health division of the department of health and human services shall use \$870,000 of funding made available through the federal COVID-19 public health crisis response grant for public health workforce to provide grants to local public health units. To be eligible to receive a grant, local public health units must apply for this grant funding by December 31, 2023. Any public health workforce funds not awarded to local public health units may be used by the department of health and human services for workforce efforts pursuant to federal grant guidance.

**SECTION 12. LABORATORY BUILDING STEERING COMMITTEE.** The department of health and human services shall establish a laboratory building steering committee to oversee the design and construction of the laboratory building project for the biennium beginning July 1, 2023, and ending June 30, 2025. The committee must include representation from the department of health and human services, department of environmental quality, office of management and budget, the governor's office, and the legislative assembly. The legislative assembly representation must include one member of the senate appointed by the senate majority leader, one member of the house appointed by the house majority leader,

and one member of the minority party from either the senate or the house appointed by the minority leaders of the senate and the house.

**SECTION 13. EXEMPTION - 2021-23 BIENNIUM APPROPRIATION - STATEWIDE HEALTH STRATEGIES.** The sum of \$3,000,000, of which \$1,500,000 is from the community health trust fund and \$1,500,000 is from other income derived from matching funds, appropriated for statewide health strategies in section 1 of chapter 32 of the 2021 Session Laws, is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available for statewide health strategies initiatives during the biennium beginning July 1, 2023, and ending June 30, 2025. The amount appropriated from the community health trust fund is contingent on the department of health and human services securing dollar-for-dollar matching funds.

**SECTION 14. EXEMPTION - 2021-23 BIENNIUM APPROPRIATION - PUBLIC HEALTH LABORATORY CAPITAL PROJECT.** The sum of \$15,000,000 of federal funds, derived from the state fiscal recovery fund, appropriated for a public health laboratory capital project in subdivision 7 of section 1 of chapter 550 of the 2021 Special Session Session Laws, is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available for the public health laboratory capital project during the biennium beginning July 1, 2023, and ending June 30, 2025.

Approved April 18, 2023

Filed April 19, 2023

**CHAPTER 5**

**HOUSE BILL NO. 1005**

(Appropriations Committee)

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, to the Indian affairs commission for the purpose of defraying the expenses of the Indian affairs commission, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	Base Level	Adjustments or Enhancements	Appropriation
Salaries and wages	\$910,106	\$23,143	\$933,249
Operating expenses	<u>185,609</u>	<u>82,109</u>	<u>267,718</u>
Total general fund	\$1,095,715	\$105,252	\$1,200,967
Full-time equivalent positions	4.00	0.00	4.00

Approved April 18, 2023

Filed April 19, 2023

## CHAPTER 6

### HOUSE BILL NO. 1006

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the North Dakota aeronautics commission; and to provide an exemption.

#### 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 aeronautics commission for the purpose of defraying the expenses of the North Dakota aeronautics commission, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$1,599,310	\$160,357	\$1,759,667
Operating expenses	2,067,677	1,467,323	3,535,000
Capital assets	0	2,250,000	2,250,000
Grants	<u>27,550,000</u>	<u>3,550,000</u>	<u>31,100,000</u>
Total all funds	\$31,216,987	\$7,427,680	\$38,644,667
Less estimated income	<u>30,741,987</u>	<u>7,427,680</u>	<u>38,169,667</u>
Total general fund	\$475,000	\$0	\$475,000
Full-time equivalent positions	7.00	0.00	7.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
International Peace Garden airport rehabilitation	\$0	\$2,500,000
Airport grants	<u>5,000,000</u>	<u>4,000,000</u>
Total other funds	\$5,000,000	\$6,500,000

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The aeronautics commission shall report to the appropriation committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. ESTIMATED INCOME - AIRPORT INFRASTRUCTURE FUND - AIRPORT GRANTS - EXEMPTION.** The estimated income line item in section 1 of this Act includes \$20,000,000 from the airport infrastructure fund for the aeronautics commission to provide grants to airports during the biennium beginning July 1, 2023, and ending June 30, 2025. Section 54-44.1-11 does not apply to this funding, and any funds not spent by June 30, 2025, must be continued into the biennium beginning July 1, 2025, and ending June 30, 2027, and may be expended only for providing grants to airports.

**SECTION 4. EXEMPTION - FEDERAL STATE FISCAL RECOVERY FUND.**

Section 54-44.1-11 does not apply to the appropriation in subsection 41 of section 1 of chapter 550 of the 2021 Special Session Session Laws, and any unexpended funds from this appropriation may be continued and used for the purpose of airport infrastructure grants during the biennium beginning July 1, 2023, and ending June 30, 2025.

Approved April 12, 2023

Filed April 13, 2023

## CHAPTER 7

### HOUSE BILL NO. 1007

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the veterans' home; to provide for a legislative management study; and to provide for a report.

#### 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 for the purpose of defraying the expenses of the veterans' home, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$19,209,879	\$849,837	\$20,059,716
Operating expenses	5,539,333	538,842	6,078,175
Capital assets	<u>407,271</u>	<u>2,437,811</u>	<u>2,845,082</u>
Total all funds	\$25,156,483	\$3,826,490	\$28,982,973
Less estimated income	<u>19,375,840</u>	<u>3,597,134</u>	<u>22,972,974</u>
Total general fund	\$5,780,643	\$229,356	\$6,009,999
Full-time equivalent positions	114.79	0.00	114.79

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Indoor parking and storage	\$0	\$750,000
Parking lot and road repairs	0	1,100,000
Equipment	16,700	125,750
Thermostat replacements	131,500	478,930
Resident absences	25,000	0
Memorial garden project	200,000	0
COVID-19 pandemic costs	<u>1,300,000</u>	<u>0</u>
Total all funds	\$1,673,200	\$2,454,680
Less estimated income	<u>1,648,200</u>	<u>2,454,680</u>
Total general fund	\$25,000	\$0

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The veterans' home shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. ESTIMATED INCOME - SOLDIERS' HOME FUND - ADMINISTRATOR HOUSING STIPEND.** The estimated income line item in section 1

of this Act includes the sum of \$48,000 from the soldiers' home fund for the purpose of providing a \$2,000 monthly housing stipend to the veterans' home administrator for housing costs off the veterans' home campus.

**SECTION 4. ESTIMATED INCOME - FEDERAL STATE FISCAL RECOVERY FUND - THERMOSTAT REPLACEMENTS.** The estimated income line item in section 1 of this Act includes the sum of \$478,930 from federal funds derived from the state fiscal recovery fund for the purpose of a thermostat and air handling unit replacement project.

**SECTION 5. LEGISLATIVE MANAGEMENT STUDY - VETERANS' HOME GOVERNANCE.** During the 2023-24 interim, the legislative management shall consider studying current and future governance needs of the veterans' home. The study must include a review of the report provided in section 6 of this Act. The study must consider the current duties and responsibilities of the administrative committee on veterans' affairs, the veterans' home governing board, and the veterans' home administrator and any organizational changes necessary to provide services for veterans and veterans' spouses, increase resident census at the veterans' home, accomplish goals included in the veterans' home strategic plan, and ensure the long-term viability of the veterans' home. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 6. VETERANS' HOME STRATEGIC PLAN - LEGISLATIVE MANAGEMENT REPORT - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The veterans' home shall report to the legislative management by January 1, 2024, regarding the status of implementing recommendations included in the veterans' home strategic plan as provided for in section 1 of chapter 7 of the 2019 Session Laws. The veterans' home shall forward a copy of the report to the governor and each United States senator and congressman representing North Dakota. The veterans' home shall provide an updated report to the appropriations committees of the sixty-ninth legislative assembly, the governor, and each United States senator and congressman representing North Dakota during the 2025 legislative session. The report must include information on the status and progress of:

1. The veterans' home current and future planned marketing initiative outcomes, including:
  - a. Marketing efforts to community-based outpatient clinics throughout the state and how the veterans' home can increase community-based services to veterans statewide; and
  - b. How the agency will increase statewide awareness of the veterans' home, including promoting services available to veterans and veterans' spouses;
2. Implementation of minimum data set and documentation audit recommendations to increase operational efficiencies, census, and staffing;
3. The veterans' home and each United States senator and congressman representing North Dakota collaborating to negotiate with the United States department of veterans affairs on the forgiveness of approximately \$15,700,000 of federal funding used in the construction of the veterans' home and the other options regarding federal funding concerns;

4. Evaluating options to adjust basic care and skilled care reimbursement rates to more adequately compensate for services provided to veterans and veterans' spouses;
5. The feasibility of providing collaborative hospice care at the veterans' home and the creation of a business plan including advantages, disadvantages, and potential costs and revenue;
6. The feasibility of providing assisted and independent living care at the veterans' home and the creation of a business plan including advantages, disadvantages, and potential costs and revenue;
7. The feasibility of providing adult day care at the veterans' home and the creation of a business plan including advantages, disadvantages, and potential costs and revenue;
8. The feasibility of providing outpatient services at the veterans' home and the creation of a business plan including advantages, disadvantages, and potential costs and revenue;
9. The feasibility of engaging in collaborative planning and work efforts with competing senior living providers in areas surrounding the veterans' home and the feasibility of contracting with a third party to operate the veterans' home; and
10. The final strategic plan submitted by the veterans' home third-party consultant.

Approved April 28, 2023

Filed April 29, 2023

# CHAPTER 8

## HOUSE BILL NO. 1008

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of financial institutions; to provide an exemption; and to provide for a legislative management 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 from special funds derived from 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, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$7,415,098	\$299,364	\$7,714,462
Operating expenses	1,671,409	450,508	2,121,917
Contingency	<u>20,000</u>	<u>0</u>	<u>20,000</u>
Total special funds	\$9,106,507	\$749,872	\$9,856,379
Full-time equivalent positions	31.00	3.00	34.00

**SECTION 2. EXEMPTION - LINE ITEM TRANSFERS.** Notwithstanding section 54-16-04, the department of financial institutions may transfer funds between line items within section 1 of this Act during the biennium beginning July 1, 2023, and ending June 30, 2025. The department of financial institutions shall notify the office of management and budget and the legislative council of any transfer made pursuant to this section.

**SECTION 3. LEGISLATIVE MANAGEMENT STUDY - APPROPRIATION AND MANAGEMENT PROCEDURES.** During the 2023-24 interim, the legislative management shall consider studying the appropriation procedures for the department of financial institutions. The study must include an analysis of the feasibility and desirability of alternative appropriation methods, management structures employed, oversight and reporting to the executive and legislative branches of government, staff classifications structures tied to federal or market compensation indexes, and staffing structures which allow for adjustments to market conditions. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

Approved May 4, 2023

Filed May 5, 2023

# CHAPTER 9

## HOUSE BILL NO. 1009

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the state fair association.

### 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, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Premiums	\$542,833	\$100,000	\$642,833
Total general fund	\$542,833	\$100,000	\$642,833

Approved March 30, 2023

Filed April 3, 2023

## CHAPTER 10

### HOUSE BILL NO. 1010

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the council on the arts; to provide for transfers; to provide for a report; 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 council on the arts for the purpose of defraying the expenses of the council on the arts, for the period beginning with the effective date of this Act, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$1,082,619	\$212,465	\$1,295,084
Operating expenses	286,545	540,048	826,593
Grants	<u>2,082,524</u>	<u>342,818</u>	<u>2,425,342</u>
Total all funds	\$3,451,688	\$1,095,331	\$4,547,019
Less estimated income	<u>1,788,922</u>	<u>161,078</u>	<u>1,950,000</u>
Total general fund	\$1,662,766	\$934,253	\$2,597,019
Full-time equivalent positions	5.00	1.00	6.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
New full-time equivalent position	\$0	\$2,500
Accrued leave payouts	0	106,430
Strategic planning consultant	0	40,000
Arts across the prairie initiative	0	170,000
Information technology equipment	0	10,000
Total all funds	\$0	\$328,930
Total other funds	0	70,000
Total general fund	\$0	\$258,930

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The council on the arts shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. APPROPRIATION - CULTURAL ENDOWMENT FUND.** 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, 2023, and ending June 30, 2025.

**SECTION 4. APPROPRIATION - GIFTS, GRANTS, AND BEQUESTS.** All gifts, grants, devises, bequests, donations, and assignments received by the council on the arts are appropriated to the council on the arts for the purposes provided in section 54-54-06, for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 5. EXEMPTION - LINE ITEM TRANSFERS - REPORT.** Notwithstanding section 54-16-04, the director of the office of management and budget shall transfer funds between line items in section 1 of this Act as requested by the council on the arts. The council on the arts shall notify the legislative council of any transfer made pursuant to this section. The council on the arts shall report to the budget section after June 30, 2024, any transfer made in excess of \$50,000 and to the appropriations committees of the sixty-ninth legislative assembly regarding any transfers made pursuant to this section.

**SECTION 6. EMERGENCY.** The amount of \$106,430 from the general fund appropriated in the salaries and wages line item for accrued leave payouts in section 1 of this Act is declared to be an emergency measure.

Approved May 5, 2023

Filed May 9, 2023

## CHAPTER 11

### HOUSE BILL NO. 1011

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the highway patrol; to create and enact section 39-03-18.1 of the North Dakota Century Code, relating to a federal assets forfeiture fund; to provide an exemption; to provide a continuing appropriation; to provide a report; and to provide for a transfer.

#### 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, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Highway patrol	\$62,113,414	\$9,075,774	\$71,189,188
Total all funds	\$62,113,414	\$9,075,774	\$71,189,188
Less estimated income	<u>25,785,652</u>	<u>(4,035,290)</u>	<u>21,750,362</u>
Total general fund	\$36,327,762	\$13,111,064	\$49,438,826
Full-time equivalent positions	193.00	12.00	205.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding

items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Commercial motor carrier system	\$275,000	\$150,000
Hard body armor	265,000	0
Body and in-car cameras	1,158,000	0
Training academy remodel	3,000,000	0
Law enforcement radios	2,612,000	0
New trooper startup costs	0	636,000
Inflationary increases	0	2,562,000
Narcotics tester	0	60,000
Unmanned aerial vehicle program	0	104,000
Motor carrier program	0	427,000
Technology enhancements	0	283,200
Shooting range repairs	<u>0</u>	<u>200,000</u>
Total all funds	\$7,310,000	\$4,422,200
Less estimated income	<u>7,310,000</u>	<u>1,589,616</u>
Total general fund	\$0	\$2,832,584

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The highway patrol shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. ESTIMATED INCOME - TRANSFER - HIGHWAY TAX DISTRIBUTION FUND.** The estimated income line item in section 1 of this Act includes the sum of \$11,256,381, 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 defraying the expenses of the highway patrol during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 4. ESTIMATED INCOME - MOTOR CARRIER ELECTRONIC PERMIT TRANSACTION FUND.** The estimated income line item in section 1 of this Act includes \$1,633,648 from the motor carrier electronic permit transaction fund for defraying various expenses associated with the issuance of permits and other nonenforcement motor carrier and administrative activities.

**SECTION 5. TRANSFER - MOTOR CARRIER ELECTRONIC PERMIT FUND TO NORTH DAKOTA HIGHWAY PATROLMEN'S RETIREMENT FUND.** The office of management and budget shall transfer the sum of \$3,000,000 from the motor carrier electronic permit fund to the North Dakota highway patrolmen's retirement fund for the purpose of reducing the unfunded liability of the North Dakota highway patrolmen's retirement plan during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 6. EXEMPTION - UNEXPENDED APPROPRIATIONS.** The following appropriations are not subject to the provisions of section 54-44.1-11 and may be continued into the biennium beginning July 1, 2023, and ending June 30, 2025:

1. The sum of \$3,000,000 of federal funds appropriated in section 6 of chapter 15 of the 2021 Session Laws for the law enforcement training academy project.
2. The sum of \$225,000 of federal funds appropriated in section 1 of chapter 39 of the 2021 Session Laws for the commercial vehicle information exchange window system.
3. The sum of \$2,612,000 of federal funds derived from the state fiscal recovery fund appropriated in subsection 21 of section 1 of chapter 550 of the 2021 Special Session Session Laws for purchasing radios compatible with the statewide interoperable radio network.

**SECTION 7. 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, 2023, and ending June 30, 2025. 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 the patrol officers' 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 8.** Section 39-03-18.1 of the North Dakota Century Code is created and enacted as follows:

**39-03-18.1. Highway patrol - Federal assets forfeiture fund - Continuing appropriation.**

There is created in the state treasury the highway patrol federal assets forfeiture fund. The fund consists of moneys received through federal asset forfeiture sharing programs. Funds received through federal sharing programs may not be deposited in the same account as assets forfeited pursuant to section 39-03-18. Up to three hundred thousand dollars is appropriated from the fund on a continuing basis each biennium to the highway patrol. Funding may be used only for eligible purchases identified by the federal department of justice and federal department of treasury. The superintendent, with the concurrence of the director of the office of management and budget, shall establish the necessary accounting procedures in accordance with the federal asset sharing program for the use of the fund. All expenditures of moneys in the fund must be approved by the superintendent.

**SECTION 9. DEFERRED MAINTENANCE - UNEXPENDED APPROPRIATIONS.**

Pursuant to section 54-44.1-11, the highway patrol may submit a request to the chairmen of the appropriations committees of the senate and house of representatives of the legislative assembly and office of management and budget to continue unexpended appropriation authority transferred to the agency for deferred maintenance under subsection 10 of section 1 of chapter 550 of the 2021 Special Session Session Laws.

Approved April 27, 2023

Filed April 28, 2023

## CHAPTER 12

### HOUSE BILL NO. 1012

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of transportation; to provide a continuing appropriation; to create and enact a new section to chapter 24-01 and sections 54-27-19.3 and 54-27-19.4 of the North Dakota Century Code, relating to designating state highway 13, the legacy earnings highway distribution fund, and legacy earnings township highway aid fund; to amend and reenact section 24-02-37.3 of the North Dakota Century Code as created by section 1 of Senate Bill No. 2113, as approved by the sixty-eighth legislative assembly, section 57-40.3-10 of the North Dakota Century Code, and section 13 of chapter 15 and section 10 of chapter 80 of the 2021 Session Laws, relating to the flexible transportation fund, motor vehicle excise tax allocations, an appropriation for township roadway funding, and the appropriation of bond proceeds for transportation projects; to provide an exemption; to provide a report; to provide for a legislative management study; 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 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, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$204,109,585	\$13,636,811	\$217,746,396
Operating expenses	270,888,188	61,993,286	332,881,474
Capital assets	902,431,344	653,963,721	1,556,395,065
Grants	118,085,610	2,485,848	120,571,458
Contingent loan authorization	<u>0</u>	<u>78,500,000</u>	<u>78,500,000</u>
Total all funds	\$1,495,514,727	\$810,579,666	\$2,306,094,393
Less estimated income	<u>1,495,514,727</u>	<u>800,204,666</u>	<u>2,295,719,393</u>
Total general fund	\$0	\$10,375,000	\$10,375,000
Full-time equivalent positions	982.00	19.00	1,001.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Road and bridge projects and matching funds	\$255,000,000	\$0
Contingent loans	50,000,000	78,500,000
Bond proceeds	70,000,000	0
Federal funds authority	498,609,357	0
Beyond visual line of sight infrastructure	5,000,000	0

Construction and materials management system	9,660,000	0
Township emergency repair grants	750,000	0
State matching funds	0	114,000,000
Federal highway funds	0	290,000,000
State flexible transportation fund	0	51,000,000
Roadway management system project	0	6,250,000
Door security	0	865,000
Automated vehicle location	0	2,010,000
Short line railroad programs	0	6,500,000
United States highway 52 environmental study	0	5,000,000
Flood projects study	0	2,500,000
Rural transit program grants	0	1,250,000
Total all funds	\$889,019,357	\$557,875,000
Less estimated income	<u>889,019,357</u>	<u>547,500,000</u>
Total general fund	\$0	\$10,375,000

The 2023-25 biennium one-time funding amounts are not a part of the department's base budget for the 2025-27 biennium. The department of transportation shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. EXEMPTION - LINE ITEM TRANSFERS.** Notwithstanding section 54-16-04, the director of the office of management and budget shall transfer appropriation authority among the salaries and wages, operating expenses, capital assets, and grants line items in section 1 of this Act as requested by the director of the department of transportation when it is cost-effective for construction and maintenance of highways. The department of transportation shall notify the legislative council of any transfers made pursuant to this section.

**SECTION 4. CONTINGENT LOAN AUTHORIZATION - CONTINGENT FUNDING - HIGHWAY IMPROVEMENT PROJECTS.** The department of transportation may borrow from the Bank of North Dakota, \$50,000,000, or so much of the sum as may be necessary, which is appropriated to the department of transportation in the contingent loan authorization line item in section 1 of this Act for matching federal funds that may become available, for the biennium beginning July 1, 2023, and ending June 30, 2025. The funds may be borrowed and spent only upon certification by the director of the department of transportation to the director of the office of management and budget that the department has been awarded additional federal grants related to United States highway 85 during the biennium beginning July 1, 2023, and ending June 30, 2025. The department of transportation shall request from the sixty-ninth legislative assembly an appropriation to repay any outstanding loans authorized in this section.

**SECTION 5. CONTINGENT LOAN AUTHORIZATION - CONTINGENT FUNDING - FLOOD PROJECTS.** The department of transportation may borrow from the Bank of North Dakota, \$28,500,000, or so much of the sum as may be necessary, which is appropriated to the department of transportation in the contingent loan authorization line item in section 1 of this Act for matching funds made available from the state of Minnesota for northern Red River valley transportation projects, for the biennium beginning July 1, 2023, and ending June 30, 2025. The funds authorized in this section may be borrowed and spent only upon certification by the director of the department of transportation to the office of management and budget that the Minnesota department of transportation will match these funds on a dollar-for-dollar basis. The funds may be borrowed and spent for phase one of a project to address northern Red River valley flooding issues and are available for design, redesign,

preliminary and final engineering, environmental analysis, right of way acquisition, and construction, including demolition. The department of transportation shall request from the sixty-ninth legislative assembly an appropriation to repay any outstanding loans authorized in this section.

**SECTION 6. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND.** The estimated income line item in section 1 of this Act includes the sum of \$179,000,000 from the strategic investment and improvements fund for the following purposes:

1. The sum of \$114,000,000 for matching federal highway funding;
2. The sum of \$51,000,000 to establish a state flexible transportation fund;
3. The sum of \$6,500,000 to enhance existing loan programs to assist short line railroads with rail improvement projects;
4. The sum of \$2,500,000 to match funding from the state of Minnesota and other sources for studies, preliminary engineering, and environmental studies to address northern Red River valley infrastructure affected by flooding; and
5. The sum of \$5,000,000 for an environmental study of a portion of United States highway 52.

**SECTION 7. RURAL TRANSIT FUNDING.** The grants line item in section 1 of this Act includes the sum of \$1,250,000 from the general fund for grants to rural transit providers in nonurban areas.

**SECTION 8. CONSTRUCTION OF REST AREA AND VISITOR CENTER.** Notwithstanding any other provision of law, the director of the department of transportation may enter into a cooperative agreement with a public or private entity and may expend moneys from the state highway fund or any moneys within the limits of the legislative appropriations for the purpose of constructing a rest area and visitor center in western North Dakota, for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 9.** A new section to chapter 24-01 of the North Dakota Century Code is created and enacted as follows:

**Trooper Beryl McLane memorial highway - State highway 13 - Continuing appropriation.**

The department shall designate state highway 13 from Edgeley to LaMoure as the Trooper Beryl McLane memorial highway and shall place signs along the highway designating that name. The department may accept any appropriate signs or funds donated to the department for the placement of signs. Any donated funds are appropriated to the department on a continuing basis for the purpose of providing signs designating state highway 13 as the Trooper Beryl McLane memorial highway.

**SECTION 10. AMENDMENT.** Section 24-02-37.3 of the North Dakota Century Code as created by section 1 of Senate Bill No. 2113, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

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<sup>1</sup> Section 24-02-37.3 was created by section 1 of Senate Bill No. 2113, chapter 266, and was also amended by section 31 of Senate Bill No. 2015, chapter 47.

**24-02-37.3. Flexible transportation fund - Budget section approval - Report.**

There is created in the state treasury the flexible transportation fund. The fund consists of eligible federal or state funding and any contributed private funds.

1. The flexible transportation fund must be administered and expended by the director and may be used for the following:
  - a. Providing a match for federal funding obtained by the department of transportation.
  - b. State-funded road and bridge construction and maintenance, and transportation support costs including staffing, facilities, and operational expenditures on the state highway system.
  - c. State-funded road and bridge construction and maintenance activities within the state but off of the state highway system. The director shall establish the terms and provisions of the program.
2. All money derived from the investment of the flexible transportation fund or any portion of the fund, must be credited to the flexible transportation fund. The director shall monthly transmit all moneys collected and received under this chapter to the state treasurer to be transferred and credited to the flexible transportation fund.
3. The director must receive budget section approval for any project that utilizes more than fifteen million dollars from the fund except for projects that match federal or private funds and the amount utilized from the fund is fifty percent or less of total project costs. Any request considered by the budget section must comply with section 54-35-02.9.
4. The director shall allocate at least twenty-five percent of motor vehicle excise tax collections deposited in the flexible transportation fund pursuant to section 57-40.3-10 for non-oil-producing county and township road and bridge projects as follows:
  - a. The funds must be allocated by the department to counties for projects or grants for the benefit of counties and organized and unorganized townships;
  - b. The department shall establish criteria to distribute the funds;
  - c. The funds must be used for the maintenance and improvement of county and township paved and unpaved roads and bridges;
  - d. Priority must be given to projects that match federal funds and to projects that improve roadways that serve as local corridors;
  - e. An organized township is not eligible to receive funding if the township does not maintain any roadways or does not levy at least eighteen mills for general purposes; and

f. For purposes of this subsection, "non-oil-producing county" means a county that received no allocation of funding or a total allocation of less than five million dollars under subsection 2 of section 57-51-15 in the most recently completed even-numbered fiscal year before the start of each biennium.

5. The director shall provide periodic reports to the budget section regarding the status of the fund and projects receiving allocations from the fund.

**SECTION 11.** Section 54-27-19.3 of the North Dakota Century Code is created and enacted as follows:

**54-27-19.3. Legacy earnings highway distribution fund.**

A legacy earnings highway distribution fund is created as a special fund in the state treasury into which must be deposited any allocations of legacy fund earnings made under section 21-10-13. Any moneys in the legacy earnings highway distribution fund must be allocated and transferred by the state treasurer, as follows:

1. Sixty percent must be transferred to the department of transportation for deposit in the state highway fund;
2. Ten percent must be transferred to the legacy earnings township highway aid fund;
3. One and five-tenths percent must be transferred to the public transportation fund; and
4. Twenty-eight and five-tenths percent must be allocated to cities and counties using the formula established in subsection 4 of section 54-27-19. Moneys received by counties and cities must be used for roadway purposes in accordance with section 11 of article X of the Constitution of North Dakota.

**SECTION 12.** Section 54-27-19.4 of the North Dakota Century Code is created and enacted as follows:

**54-27-19.4. Legacy earnings township highway aid fund.**

A legacy earnings township highway aid fund is created as a special fund in the state treasury into which must be deposited any allocations of legacy fund earnings made under section 54-27-19.3 which must be allocated as follows:

1. The state treasurer shall allocate and distribute all money in the legacy earnings township highway aid fund to non-oil-producing counties of the state based on the length of township roads in each non-oil-producing county compared to the length of all township roads in all the non-oil-producing counties;
2. The county treasurer shall allocate the funds received to the organized townships in the county based on the length of township roads in each of those organized 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 road and bridge purposes;
3. If a county 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; and

4. For purposes of this section, "non-oil-producing county" means a county that received no allocation of funding or a total allocation of less than five million dollars under subsection 2 of section 57-51-15 in the most recently completed even-numbered fiscal year before the start of each biennium.

**SECTION 13. AMENDMENT.** Section 57-40.3-10 of the North Dakota Century Code is amended and reenacted as follows:

**57-40.3-10. 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. After the deposits under sections 57-39.2-26.1, 57-39.2-26.2, and 57-39.2-26.3, moneys collected and received under this chapter must be deposited monthly in the state treasury and allocated as follows:

1. Fifty percent to the general fund; and
2. The remaining fifty percent to the flexible transportation fund.

**SECTION 14. AMENDMENT.** Section 13 of chapter 15 of the 2021 Session Laws is amended and reenacted as follows:

**SECTION 13. 2019-21 BIENNIUM APPROPRIATION - TRANSFER - GENERAL FUND TO HIGHWAY FUND - 2021-23 BIENNIUM APPROPRIATION - HIGHWAY FUND AND FEDERAL FUNDS - EXEMPTION - REPORT.**

1. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000,000, which the office of management and budget shall transfer to the highway fund during the period beginning with the effective date of this Act, and ending June 30, 2021. The funds transferred to the highway fund must be maintained and reported separately from other funds in the highway fund.
2. There is appropriated out of any moneys in the highway fund, not otherwise appropriated, the sum of \$100,000,000, or so much of the sum as may be necessary, to the department of transportation for the purpose of matching federal discretionary funds received in excess of the regular federal funding amounts included in the department's 2021-23 biennium budget, for the biennium beginning July 1, 2021, and ending June 30, 2023. Of this amount, the department shall use at least \$10,000,000 ~~for matching federal funds~~ for township road and bridge projects as follows:
  - a. The funds must be allocated by the department to counties for projects or grants for the benefit of organized and unorganized townships;
  - b. The department shall establish criteria to distribute the funds;
  - c. The funds must be used for the maintenance and improvement of township paved and unpaved roads and bridges;

- d. Priority must be given to projects that match federal funds and to projects that improve roadways that serve as local corridors; and
- e. A township is not eligible to receive funding if the township does not maintain any roadways.
3. There is appropriated from federal funds, the sum of \$100,000,000, or so much of the sum as may be necessary, to the department of transportation for the purpose of defraying the expenses of road and bridge construction projects for the biennium beginning July 1, 2021, and ending June 30, 2023.
  4. On June 30, 2023, the office of management and budget shall transfer any unexpended and unobligated funds transferred to the highway fund under subsection 1 to the general fund. The appropriation provided in this section is not subject to section 54-44.1-11 and may be continued into the biennium beginning July 1, 2023, and ending June 30, 2025.
  5. During the 2021-22 interim, the department of transportation shall provide quarterly reports to the budget section regarding the use of funds transferred from the general fund to the highway fund.

**SECTION 15. AMENDMENT.** Section 10 of chapter 80 of the 2021 Session Laws is amended and reenacted as follows:

**~~SECTION 10. APPROPRIATION - HIGHWAY FUND - CONTINGENT TRANSFER EXEMPTION.~~** There is appropriated out of any moneys in the highway fund in the state treasury, not otherwise appropriated, the sum of \$70,000,000, or so much of the sum as may be necessary, derived from bond proceeds to the department of transportation for state highway road and bridge projects and for matching federal funds that may become available, for the biennium beginning July 1, 2021, and ending June 30, 2023. ~~Of the \$70,000,000, \$35,000,000 is designated for state highway bridge projects, and \$35,000,000 is designated for matching federal funds that may become available for state highway projects in excess of the federal funds appropriated to the department of transportation as part of its 2021-23 biennial budget. By October 1, 2022, the director of the department of transportation shall certify to the office of management and budget the amount of funding committed to matching excess federal funds from the \$35,000,000 provided under this section. If the amount committed is less than \$35,000,000, the office of management and budget shall transfer any uncommitted amounts to the infrastructure revolving loan fund under section 6-09-49. The appropriation provided in this section is not subject to section 54-44.1-11 and may be continued into the biennium beginning July 1, 2023, and ending June 30, 2025.~~

**SECTION 16. LEGISLATIVE MANAGEMENT STUDY - ELECTRIC VEHICLES.** During the 2023-24 interim, the legislative management shall consider studying the effect of electric vehicles in the state. As part of the study, the legislative management shall consider the assessment of fees to offset reductions in motor fuel tax revenues; the impact of electric vehicles on electric demand and the electrical grid; the installation of electric vehicle charging infrastructure by private and public entities, including potential funding sources; the impact to public services and public transportation providers; and the effect on employment opportunities and other economic impacts, including tourism, automobile dealers, the energy industry, and the

critical minerals industry. The study must include input from key stakeholders, including electric vehicle manufacturers, electric vehicle dealers, electric utilities, electric vehicle charging station manufacturers, and other transportation entities. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 17. DEPARTMENT OF TRANSPORTATION - UNITED STATES HIGHWAY 85 PROJECT - REPORT.** The department of transportation shall develop a plan to complete the United States highway 85 four-lane project in its entirety as approved in the final environmental impact statement document for project number 9-085(085)075, PCN20046. The plan must include a review of federal approvals received for the project and options to complete the project before the approvals expire. As part of the plan, the department shall identify funding sources, including the issuance of revenue anticipation bonds, to complete the project. The department shall present its plan to the legislative management before August 1, 2024.

**SECTION 18. EXEMPTION - UNEXPENDED APPROPRIATIONS.** The following appropriations are not subject to the provisions of section 54-44.1-11 and may be continued into the biennium beginning July 1, 2023, and ending June 30, 2025:

1. The sum of \$750,000 appropriated from the state disaster relief fund for emergency township road repairs in section 4 of chapter 40 of the 2021 Session Laws;
2. The sum of \$1,609,357 appropriated from federal funds for grants to transit providers in subdivision 10 of section 2 of chapter 28 of the 2021 Session Laws;
3. The sum of \$55,000,000 appropriated from federal funds to match state bond proceeds in section 5 of chapter 15 of the 2021 Session Laws;
4. The sum of \$317,000,000 appropriated from federal funds for state, county, and township road and bridge projects in section 2 of chapter 28 of the 2021 Session Laws;
5. The sum of \$61,700,060 appropriated from federal funds for surface transportation grants in subdivision 10 of section 1 of chapter 27 of the 2021 Session Laws; and
6. The sum of \$13,660,000 appropriated from special funds for information technology projects in section 1 of chapter 40 of the 2021 Session Laws.

**SECTION 19. EFFECTIVE DATE.** Section 13 of this Act is effective for motor vehicle excise tax collections transmitted to the state treasurer after July 31, 2023.

**SECTION 20. EMERGENCY.** Sections 14 and 15 of this Act are declared to be an emergency measure.

Approved May 8, 2023

Filed May 9, 2023

## CHAPTER 13

### HOUSE BILL NO. 1013

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the commissioner of university and school lands; and to provide for distributions from permanent funds.

#### 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 the state lands maintenance 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, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$6,473,127	\$1,050,694	\$7,523,821
Operating expenses	2,229,872	(460,778)	1,769,094
Capital assets	0	4,949,500	4,949,500
Contingencies	<u>100,000</u>	<u>0</u>	<u>100,000</u>
Total special funds	\$8,802,999	\$5,539,416	\$14,342,415
Full-time equivalent positions	30.00	3.00	33.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Information technology project	\$1,600,000	\$4,900,000
Information technology equipment	0	5,400
Utility vehicle and trailer	0	<u>49,500</u>
Total special funds	\$1,600,000	\$4,954,900

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The commissioner of university and school lands shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. DISTRIBUTIONS TO STATE INSTITUTIONS.** Pursuant to article IX of the Constitution of North Dakota, the board of university and school lands shall distribute during the biennium beginning July 1, 2023, and ending June 30, 2025, the following amounts, from the permanent funds managed for the benefit of the following entities:

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Common schools	\$499,860,000
North Dakota state university	7,648,000
University of North Dakota	5,986,000
Youth correctional center	2,662,000
School for the deaf	2,198,000
North Dakota state college of science	2,259,700
State hospital	1,835,700
Veterans' home	893,700
Valley City state university	1,354,000
North Dakota vision services - school for the blind	1,679,700
Mayville state university	894,000
Dakota college at Bottineau	343,700
Dickinson state university	343,700
Minot state university	<u>343,700</u>
Total	\$528,301,900

Approved April 28, 2023

Filed April 29, 2023

## CHAPTER 14

### HOUSE BILL NO. 1014

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the industrial commission and the agencies under its control; to amend and reenact sections 6-09.7-05, 54-17-40, and 54-17.7-01, subsections 3 and 4 of section 54-17.7-04, and subsection 3 of section 54-63.1-07 of the North Dakota Century Code and subsection 36 of section 1 of chapter 550 of the 2021 Special Session Session Laws, relating to fuel production facility loan guarantee reserve funding, the housing incentive fund, the powers of the North Dakota pipeline authority, definitions for the clean sustainable energy authority, a clean sustainable energy authority line of credit, and an appropriation from the state fiscal recovery fund; to provide a contingent appropriation; to provide for a transfer; to provide an exemption; to provide for a study; to provide for a report; 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. 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 industrial commission and agencies under its control for the purpose of defraying the expenses of the industrial commission and the agencies under its control, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

##### Subdivision 1.

#### INDUSTRIAL COMMISSION

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$23,698,119	(\$21,835,425)	\$1,862,694
Operating expenses	5,119,958	(924,889)	4,195,069
Capital assets	0	1,250,000	1,250,000
Grants	0	8,623,893	8,623,893
Grants - bond payments	<u>22,040,721</u>	<u>97,839,192</u>	<u>119,879,913</u>
Total all funds	\$50,858,798	\$84,952,771	\$135,811,569
Less estimated income	<u>24,369,185</u>	<u>107,017,528</u>	<u>131,386,713</u>
Total general fund	\$26,489,613	(\$22,064,757)	\$4,424,856
Full-time equivalent positions	108.25	(98.50)	9.75

##### Subdivision 2.

#### DEPARTMENT OF MINERAL RESOURCES

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$0	\$23,123,267	\$23,123,267
Operating expenses	0	11,541,104	11,541,104

Capital assets	0	98,000	98,000
Total all funds	\$0	\$34,762,371	\$34,762,371
Less estimated income	0	2,568,000	2,568,000
Total general fund	\$0	\$32,194,371	\$32,194,371
Full-time equivalent positions	0.00	108.00	108.00

Subdivision 3.

#### BANK OF NORTH DAKOTA

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Bank of North Dakota operations	\$67,306,548	\$2,760,519	\$70,067,067
Capital assets	1,510,000	0	1,510,000
Total special funds	\$68,816,548	\$2,760,519	\$71,577,067
Full-time equivalent positions	173.00	14.00	187.00

Subdivision 4.

#### HOUSING FINANCE AGENCY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$9,556,272	\$1,556,933	\$11,113,205
Operating expenses	6,109,060	4,794,823	10,903,883
Capital assets	150,000	(130,000)	20,000
Grants	42,975,200	5,829,910	48,805,110
Housing finance agency contingencies	100,000	0	100,000
Total all funds	\$58,890,532	\$12,051,666	\$70,942,198
Less estimated income	58,890,532	9,551,666	68,442,198
Total general fund	\$0	\$2,500,000	\$2,500,000
Full-time equivalent positions	49.00	5.00	54.00

Subdivision 5.

#### MILL AND ELEVATOR ASSOCIATION

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$50,560,209	\$3,290,171	\$53,850,380
Operating expenses	36,817,000	5,574,653	42,391,653
Contingencies	500,000	0	500,000
Agriculture promotion	500,000	0	500,000
Total special funds	\$88,377,209	\$8,864,824	\$97,242,033
Full-time equivalent positions	156.00	14.00	170.00

Subdivision 6.

#### TOTAL - SECTION 1

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$26,489,613	\$12,629,614	\$39,119,227
Grand total special funds	240,453,474	130,762,537	371,216,011
Grand total all funds	\$266,943,087	\$143,392,151	\$410,335,238

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 one-time funding items included in the appropriation in section 1 of this Act:

One-Time Funding Description	<u>2021-23</u>	<u>2023-25</u>
Administration - transfer to clean sustainable energy fund	\$25,000,000	\$0
Administration - pipeline grant fund	150,000,000	0
Administration - hydrogen grants	20,000,000	0
Administration - new employee expenses	0	12,110
Administration - transmission authority consulting	0	300,000
Administration - electricity grid resilience federal grant	0	8,623,893
Administration - lignite litigation expenses	0	3,000,000
Administration - grant management software	0	1,250,000
Administration - carbon capture education	0	300,000
Administration - records digitization	0	75,000
Administration - inflationary increases	0	35,688
Mineral resources - paleontology and geological equipment	106,260	0
Mineral resources - abandoned well conversion program	3,200,000	0
Mineral resources - new employee expenses	0	68,335
Mineral resources - inflationary expenses	0	886,868
Mineral resources - drones and computers	0	83,648
Mineral resources - core and mineral analyses	0	100,000
Mineral resources - computer server transition	0	80,000
Mineral resources - abandoned well reclamation	0	2,300,000
Mineral resources - oil and gas litigation expenses	0	3,000,000
Bank of North Dakota - contingent loan repayment	17,500,000	0
Bank of North Dakota - bond proceed allocation	680,000,000	0
Bank of North Dakota - agriculture diversification fund	10,000,000	0
Bank of North Dakota - fuel production incentives	21,000,000	0
Bank of North Dakota - information technology projects	0	804,278
Housing finance agency - housing incentive fund	9,500,000	0
Housing finance agency - housing assessment	<u>35,000</u>	<u>0</u>
Total all funds	\$936,341,260	\$20,919,820
Less estimated income	<u>874,235,000</u>	<u>9,155,335</u>
Total general fund	\$62,106,260	\$11,764,485

The 2023-25 biennium one-time funding amounts are not part of the entity's base budget for the 2025-27 biennium. The industrial commission shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. BOND PAYMENTS.** The amount of \$119,879,913 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, 2023, and ending June 30, 2025:

Infrastructure project and program bonds - legacy sinking and interest fund	\$102,620,461
North Dakota university system	15,021,771
North Dakota university system - energy conservation projects	207,649
Department of corrections and rehabilitation	143,375

Office of management and budget	283,875
Attorney general's office	330,000
State historical society	592,375
Parks and recreation department	30,950
Agriculture research and extension service	242,205
Veterans' home	<u>407,252</u>
Total	\$119,879,913

**SECTION 4. APPROPRIATION - HOUSING FINANCE AGENCY - ADDITIONAL INCOME.** In addition to the amount appropriated to the housing finance agency in subdivision 3 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, 2023, and ending June 30, 2025. The housing finance agency shall notify the office of management and budget and the legislative council of any additional income or unanticipated income that becomes available to the agency resulting in an increase in appropriation authority.

**SECTION 5. APPROPRIATION - TRANSFER - 2021-23 BIENNIUM - DEPARTMENT OF MINERAL RESOURCES - FULL-TIME EQUIVALENT POSITIONS.**

1. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$62,460, or so much of the sum as may be necessary, to the department of mineral resources for the purpose of employing full-time equivalent carbon capture positions for the period beginning with the effective date of this Act and ending June 30, 2023. The department is authorized three full-time equivalent positions pursuant to this subsection.
2. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$15,000, which the office of management and budget shall transfer to the fossil excavation and restoration fund during the period beginning with the effective date of this Act and ending June 30, 2023.

**SECTION 6. APPROPRIATION - TRANSFER - FOSSIL RESTORATION FUND - HOUSING INCENTIVE FUND - ONE-TIME FUNDING.**

1. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$250,000, which the office of management and budget shall transfer to the fossil excavation and restoration fund during the biennium beginning July 1, 2023, and ending June 30, 2025.
2. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$13,750,000, which the office of management and budget shall transfer to the housing incentive fund during the biennium beginning July 1, 2023, and ending June 30, 2025.
3. The funding provided in this section is considered a one-time funding item.

**SECTION 7. CONTINGENT FUNDING - HOUSING FINANCE AGENCY.** The sum of \$82,068 from other funds from the new and vacant FTE funding pool and one full-time equivalent position included in subdivision 4 of section 1 of this Act are available only in accordance with the provisions of this section. If mortgage loan production for the fiscal year ended June 30, 2024, exceeds \$435,000,000, the housing finance agency may request the office of management and budget transfer

up to \$82,068 of other funds from the new and vacant FTE funding pool for salaries and wages for the full-time equivalent position identified in this section, and the agency may hire one full-time equivalent position. The housing finance agency shall notify the office of management and budget and the legislative council if the contingency is met.

**SECTION 8. TRANSFER - ENTITIES UNDER THE CONTROL OF THE INDUSTRIAL COMMISSION TO INDUSTRIAL COMMISSION FUND - ADMINISTRATION - EXEMPTION.**

1. The sum of \$1,818,114, or so much of the sum as may be necessary, included in the appropriation in subdivision 1 of section 1 of this Act, may be transferred from the entities within the control of the industrial commission or entities directed to make payments to the industrial commission fund for administrative services rendered by the commission. Transfers must be made during the biennium beginning July 1, 2023, and ending June 30, 2025, upon order of the commission. Transfers from the student loan trust fund must be made to the extent permitted by sections 54-17-24 and 54-17-25.
2. The amount of \$1,214,768 appropriated to the industrial commission in subdivision 1 of section 1 of chapter 42 of the 2021 Session Laws and transferred pursuant to section 7 of chapter 42 of the 2021 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available to the industrial commission for administrative services rendered by the commission during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 9. TRANSFER - FUNDS UNDER THE CONTROL OF THE INDUSTRIAL COMMISSION TO INDUSTRIAL COMMISSION FUND - GRANT MANAGEMENT SOFTWARE.** The sum of \$1,250,000, or so much of the sum as may be necessary, included in the appropriation in subdivision 1 of section 1 of this Act, may be transferred from funds under the control of the industrial commission to the industrial commission fund for grant management software expenses. Of the \$1,250,000, the industrial commission may transfer:

1. Up to \$250,000 from the clean sustainable energy fund;
2. Up to \$250,000 from the lignite research fund;
3. Up to \$250,000 from the oil and gas research fund;
4. Up to \$250,000 from the North Dakota outdoor heritage fund; and
5. Up to \$250,000 from the renewable energy development fund.

**SECTION 10. TRANSFER - FUNDS UNDER THE CONTROL OF THE INDUSTRIAL COMMISSION TO INDUSTRIAL COMMISSION FUND - CARBON CAPTURE EDUCATION.** The sum of \$300,000, or so much of the sum as may be necessary, included in the appropriation in subdivision 1 of section 1 of this Act, may be transferred from funds under the control of the industrial commission to the industrial commission fund to contract for carbon capture and utilization education and marketing in consultation with the lignite research council, the oil and gas research council, and the renewable energy council. Of the \$300,000, the industrial commission may transfer:

1. Up to \$100,000 from the lignite research fund;

2. Up to \$100,000 from the oil and gas research fund; and
3. Up to \$100,000 from the renewable energy development fund.

**SECTION 11. TRANSFER - BANK OF NORTH DAKOTA PROFITS TO GENERAL FUND.** The Bank of North Dakota shall transfer \$140,000,000 from the Bank's current earnings and undivided profits to the general fund during the biennium beginning July 1, 2023, and ending June 30, 2025. The moneys must be transferred in the amounts and at the times requested by the director of the office of management and budget after consultation with the Bank of North Dakota president. For legislative council budget status reporting purposes, the transfer under this section is considered an ongoing revenue source.

**SECTION 12. TRANSFER - BANK OF NORTH DAKOTA PROFITS TO ECONOMIC DEVELOPMENT PROGRAMS.** During the biennium beginning July 1, 2023, and ending June 30, 2025, the Bank of North Dakota shall transfer the following amounts from the Bank's current earnings and undivided profits:

1. \$39,000,000 to the partnership in assisting community expansion fund;
2. \$5,000,000 to the agriculture partnership in assisting community expansion fund;
3. \$1,000,000 to the biofuels partnership in assisting community expansion fund;
4. \$15,000,000 to the beginning farmer revolving loan fund; and
5. \$1,500,000 to the university of North Dakota for the North Dakota small business development center for the purpose of matching federal grants.

**SECTION 13. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - PIPELINE LEAK DETECTION AND PREVENTION PROGRAM - CLEAN SUSTAINABLE ENERGY GRANTS AND LOANS.** During the biennium beginning July 1, 2023, and ending June 30, 2025, the office of management and budget shall transfer the following amounts from the strategic investment and improvements fund:

1. \$3,000,000 to the oil and gas research fund for a pipeline leak detection and prevention program;
2. \$30,000,000 to the clean sustainable energy fund for grants; and
3. \$30,000,000 to the clean sustainable energy fund to repay a line of credit and to provide funding for loans.

**SECTION 14. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO STATE ENERGY RESEARCH CENTER FUND - RARE EARTH MINERALS STUDY - REPORT TO LEGISLATIVE MANAGEMENT.**

1. The office of management and budget shall transfer the sum of \$1,500,000 from the strategic investment and improvements fund to the state energy research center fund during the biennium beginning July 1, 2023, and ending June 30, 2025.
2. Pursuant to the continuing appropriation under section 57-51.1-07.9, the industrial commission shall distribute up to \$1,500,000 from the state energy research center fund to the state energy research center for a study related to

prospective in-state resources of economically feasible accumulations of critical minerals, including rare earth elements and other high-value minerals or materials that may be suitable for extraction and enrichment.

3. The study must include a review of in-state mineral accumulations, including coal deposits, ore bodies, oil and gas reservoirs, produced water from oil and gas development activities, saltwater zones, and shale formations. While conducting the study, the state energy research center shall collaborate with the North Dakota geological survey and active mineral lessors and developers.
4. During the 2023-24 interim, the state energy research center shall provide at least one report to the legislative management regarding the study.

**SECTION 15. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO STATE ENERGY RESEARCH CENTER FUND - FEDERAL STATE FISCAL RECOVERY FUND - UNDERGROUND ENERGY STORAGE RESEARCH PROJECT - REPORT TO LEGISLATIVE MANAGEMENT.**

1. The office of management and budget shall transfer the sum of \$6,000,000 from the strategic investment and improvements fund to the state energy research center fund.
2. Pursuant to the continuing appropriation authority under section 57-51.1-07.9 and pursuant to subsection 36 of section 1 of chapter 550 of the 2021 Special Session Laws, as amended in section 24 of this Act and exempted in section 26 of this Act, the industrial commission shall distribute up to \$6,000,000 from the state energy research center fund and up to \$5,300,000 of federal funds from the state fiscal recovery fund to the state energy research center for a salt cavern underground energy storage research project.
3. The research project must include construction of up to two salt caverns in geological formations in North Dakota for the development of underground storage of energy resources, including natural gas, liquified natural gas, natural gas liquids, and hydrogen. The state energy research center may collaborate with other entities as needed on the research project. Prior to distributing the funding, the industrial commission must receive, from at least one nonstate entity, assurance of financial or other types of support that demonstrate a commitment to the research project.
4. During the 2023-24 interim, the state energy research center shall provide quarterly reports to the industrial commission and at least one report to the legislative management regarding the status and results of the research project.

**SECTION 16. LIGNITE RESEARCH, DEVELOPMENT, AND MARKETING PROGRAM - LIGNITE MARKETING FEASIBILITY STUDY - REPORT TO THE SIXTY-NINTH LEGISLATIVE ASSEMBLY.**

1. Pursuant to the continuing appropriation under section 57-61-01.6, up to \$4,500,000 from the lignite research fund may be used 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 designated under this section also may be used for the purpose of contracting for nonmatching studies and activities in support of advanced energy technology and other technology development programs; 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 needed for the purposes stated in this section are available to the industrial commission for funding projects, processes, or activities under the lignite research, development, and marketing program.

2. The industrial commission shall report to the appropriations committees of the sixty-ninth legislative assembly on the amounts spent pursuant to this section.

### **SECTION 17. LIGNITE RESEARCH FUND - FUTURE LIGNITE ELECTRICAL GENERATION FACILITIES STUDY - REPORT TO LEGISLATIVE MANAGEMENT.**

1. Pursuant to the continuing appropriation under section 57-61-01.6, up to \$500,000 from the lignite research fund may be used for the purpose of contracting with the energy and environmental research center for a nonmatching study of future lignite electrical generation facilities.
2. The study must include consideration of an energy demand forecast for dispatchable electricity generation and the regulatory environment for future lignite electrical generation facilities, an analysis of the economic impact of future lignite electrical generation facilities and the value-added products or services that may result from those facilities, and other factors related to the development and operation of future lignite electrical generation facilities.
3. During the 2023-24 interim, the energy and environmental research center shall provide at least one report to the legislative management regarding the status of the study.

**SECTION 18. AMENDMENT.** Section 6-09.7-05 of the North Dakota Century Code is amended and reenacted as follows:

#### **6-09.7-05. Establishment and maintenance of adequate guarantee funds - Use of strategic investment and improvements fund.**

The Bank of North Dakota shall establish and at all times maintain an adequate guarantee reserve fund in a special account in the Bank. The Bank may request the director of the office of management and budget to transfer funds from the strategic investment and improvements fund created by section 15-08.1-08 to maintain one hundred percent of the guarantee reserve fund balance. Transfers from the strategic investment and improvements fund may not exceed a total of eightyone hundred forty million dollars. Moneys in the guarantee reserve fund are available to reimburse lenders, including the Bank, for guaranteed loans in default. The securities in which the moneys in the reserve fund may be invested must meet the same requirements as those authorized for investment under the state investment board. The income from such investments must be made available for the costs of administering the state guarantee loan program and income in excess of that required to pay the cost of administering the program must be deposited in the reserve fund. The amount of

reserves for all guaranteed loans must be determined by a formula that will assure, as determined by the Bank, an adequate amount of reserve.

**SECTION 19. AMENDMENT.** Section 54-17-40 of the North Dakota Century Code is amended and reenacted as follows:

**54-17-40. Housing incentive fund - Continuing appropriation - Report to budget section.**

1. The housing incentive fund is created as a special revolving fund at the Bank of North Dakota. The housing finance agency may direct disbursements from the fund and a continuing appropriation from the fund is provided for that purpose.
2. a. After a public hearing, the housing finance agency shall create an annual allocation plan for the distribution of the fund as authorized under subsection 3. ~~At least ten percent of the fund must be used to assist developing communities to address an unmet housing need or alleviate a housing shortage. At least ten percent of the fund must be made available to prevent homelessness as authorized by subdivision d of subsection 3.~~
- b. The annual allocation plan must give priority to provide housing for individuals and families of low or moderate income. For purposes of this priority, eligible income limits are determined as a percentage of median family income as published in the most recent federal register notice. Under this priority, the annual allocation plan must give preference to projects that benefit households with the lowest income and to projects that have rent restrictions at or below department of housing and urban development published federal fair market rents or department of housing and urban development section 8 payment standards.
- c. At least ten percent of the fund must be used to assist developing communities to address an unmet housing need or alleviate a housing shortage.
3. The housing finance agency shall adopt guidelines for the fund so as to address unmet housing needs in this state. Assistance from the fund may be used solely for:
  - a. New construction, rehabilitation, preservation, or acquisition of a multifamily housing project;
  - b. New construction, rehabilitation, preservation, or acquisition of a single-family housing project in a developing community or a community land trust project;
  - c. Gap assistance, matching funds, and accessibility improvements;
  - e-d. Assistance that does not exceed the amount necessary to qualify for a loan using underwriting standards acceptable for secondary market financing or to make the project feasible; and
  - d-e. Rental assistance, emergency assistance, barrier mitigation, or ~~targeted~~ supportive services designated to prevent or end homelessness.

4. Eligible recipients include units of local, state, and tribal government; local and tribal housing authorities; community action agencies; regional planning councils; and nonprofit organizations and for-profit developers of multifamily residential housing. Individuals may not receive direct assistance from the fund.
5. Except for subdivision d of subsection 3, assistance is subject to repayment or recapture under the guidelines adopted by the housing finance agency. Any assistance that is repaid or recaptured must be deposited in the fund and is appropriated on a continuing basis for the purposes of this section.
6. The agency may collect a reasonable administrative fee from the fund, project developers, applicants, or grant recipients. The origination fee assessed to grant recipients may not exceed five percent of the project award.
7. Upon request, the housing finance agency shall report to the industrial commission regarding the activities of the housing incentive fund.
8. At least once per biennium, the housing finance agency shall provide a report to the budget section of the legislative management regarding the activities of the housing incentive fund.

**SECTION 20. AMENDMENT.** Section 54-17.7-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-17.7-01. North Dakota pipeline authority - Legislative intent.**

There is created the North Dakota pipeline authority, which shall be governed by the industrial commission. It is the intent of the legislative assembly that the pipeline authority consider the operations, finances, and market positions of private entities engaged in pipeline activities while carrying out the purposes of this chapter to avoid competing with private entities to the extent possible.

**SECTION 21. 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. If the authority acquires, purchases, holds, uses, or leases capacity positions, the authority shall sell, transfer, release, or dispose of the capacity positions at intervals that are no more frequent than monthly and in an amount that is equal to or greater than the market rate, but only if the sale, transfer, release, or disposal of the capacity positions is sufficient to cover the expenses and obligations incurred. The authority's contract obligations for the capacity positions are limited to the capacity rates, charges, and terms.~~

**SECTION 22. AMENDMENT.** Subsection 4 of section 54-17.7-04 of the North Dakota Century Code is amended and reenacted as follows:

4. Borrow money and issue evidences of indebtedness as provided in this chapter, including borrowing from the Bank of North Dakota.
  - a. The authority may borrow up to sixty million dollars through a line of credit from the Bank. The interest rate on the line of credit must be the prevailing interest rate charged to North Dakota governmental entities.
  - b. The line of credit must be guaranteed by reserves under section 6-09.7-05.
  - c. The line of credit may be used to support activities under subsection 3.
  - d. The authority shall repay the line of credit from amounts available. If the amounts available on June 30, 2027, are not sufficient to repay the line of credit, the authority shall notify the director of the office of management and budget, and the director of the office of management and budget shall transfer funds from the strategic investment and improvements fund to the Bank for the repayment pursuant to section 6-09.7-05 based on the amount certified by the Bank.

<sup>2</sup> **SECTION 23. AMENDMENT.** Subsection 3 of section 54-63.1-07 of the North Dakota Century Code is amended and reenacted as follows:

3. The Bank of North Dakota shall extend a line of credit to the industrial commission to support loans or loan guarantees issued from the clean sustainable energy fund. The line of credit may not exceed ~~two~~<sup>two</sup> hundred ~~fifty~~<sup>three</sup> million dollars, and the interest rate associated with the line of credit must be the prevailing interest rate charged to North Dakota governmental entities. The industrial commission shall repay the line of credit from moneys available in the clean sustainable energy fund derived from payments received on loans issued under this chapter or other sources. If the moneys available from the clean sustainable energy fund on June 30, 2025, are not sufficient to repay the line of credit, the industrial commission shall request from the legislative assembly a deficiency appropriation to repay the line of credit or the industrial commission may repay the line of credit from other funds, as appropriated by the legislative assembly.

**SECTION 24. AMENDMENT.** Subsection 36 of section 1 of chapter 550 of the 2021 Special Session Session Laws is amended and reenacted as follows:

36. There is appropriated from federal funds derived from the state fiscal recovery fund, not otherwise appropriated, the sum of \$20,000,000, or so much of the sum as may be necessary, to the industrial commission for the purpose of providing hydrogen development grants, as approved by the clean sustainable energy authority, and distributions to the state energy research center for an underground energy storage research project, for the period beginning with the effective date of this Act, and ending June 30, 2023. Of the \$20,000,000, up to \$5,300,000 is available for distributions to the state energy research center for an underground energy storage research project, and any remaining amounts are available for providing hydrogen development grants, as approved by the clean sustainable energy authority.

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<sup>2</sup> Section 54-63.1-07 was also amended by section 14 of Senate Bill No. 2233, chapter 95.

**SECTION 25. EMPLOYEE RECRUITMENT AND RETENTION INCENTIVE PROGRAM STUDY - REPORT TO LEGISLATIVE MANAGEMENT.** During the 2023-24 interim, the industrial commission and Bank of North Dakota shall study the feasibility and desirability of creating an employee recruitment and retention incentive program for the Bank of North Dakota. The industrial commission shall report its findings and recommendations to the legislative management by March 31, 2024.

**SECTION 26. EXEMPTION - OIL AND GAS TAX REVENUE ALLOCATIONS - NORTH DAKOTA OUTDOOR HERITAGE FUND - OIL AND GAS RESEARCH FUND.**

1. Notwithstanding the provisions of section 57-51-15 relating to the allocations to the North Dakota outdoor heritage fund, for the period beginning September 1, 2023, and ending August 31, 2025, the state treasurer shall allocate eight percent of the oil and gas gross production tax revenue available under subsection 1 of section 57-51-15 to the North Dakota outdoor heritage fund, but not in an amount exceeding \$7,500,000 per fiscal year.
2. Notwithstanding the provisions of section 57-51.1-07.3 relating to the allocations to the oil and gas research fund, for the period beginning August 1, 2023, and ending July 31, 2025, the state treasurer shall allocate two percent of the oil and gas gross production tax and oil extraction tax revenues, up to \$17,500,000, into the oil and gas research fund before allocating oil and gas tax revenues under sections 57-51.1-07.5, 57-51.1-07.9, and 57-51.1-07.10.

**SECTION 27. EXEMPTION - UNEXPENDED APPROPRIATIONS.** The following appropriations are not subject to the provisions of section 54-44.1-11 and may be continued into the biennium beginning July 1, 2023, and ending June 30, 2025:

1. The sum of \$3,200,000 appropriated from the federal state fiscal recovery fund for an abandoned oil well conversion to water supply grant program in subsection 2 of section 1 of chapter 550 of the 2021 Special Session Session Laws;
2. The sum of \$20,000,000 appropriated from the federal state fiscal recovery fund for hydrogen development grants and an underground energy storage research project in subsection 36 of section 1 of chapter 550 of the 2021 Special Session Session Laws as amended in section 24 of this Act; and
3. The sum of \$800,000 appropriated from the strategic investment and improvements fund to the department of mineral resources for a survey review in section 2 of chapter 426 of the 2017 Session Laws and continued into the 2019-21 biennium pursuant to section 27 of chapter 14 of the 2019 Session Laws and into the 2021-23 biennium pursuant to section 33 of chapter 42 of the 2021 Session Laws.

**SECTION 28. LEGISLATIVE INTENT - USE OF BANK OF NORTH DAKOTA PROFITS.** It is the intent of the sixty-eighth legislative assembly that the sixty-ninth legislative assembly consider developing procedures or adopting legislative rules for introducing bills and amendments related to the use of Bank of North Dakota profits.

**SECTION 29. LEGISLATIVE INTENT - ENERGY DEVELOPMENT PROJECTS.** It is the intent of the sixty-eighth legislative assembly that the state provide support for an entity's application for federal funding to upgrade a high-voltage direct current transmission line in the state and that the state provide support for energy

development projects in the state through the state's energy-related programs, including:

1. The clean sustainable energy authority;
2. The North Dakota pipeline authority;
3. The North Dakota transmission authority;
4. The lignite research council;
5. The oil and gas research council; and
6. The renewable energy council.

**SECTION 30. EFFECTIVE DATE.** Section 18 of this Act becomes effective July 1, 2025.

**SECTION 31. EMERGENCY.** The following are declared to be an emergency measure:

1. The sum of \$3,000,000 from the general fund in the operating expenses line item included in subdivision 1 of section 1 of this Act and identified as one-time funding in section 2 of this Act for lignite litigation expenses.
2. The sum of \$3,000,000 from the general fund in the operating expenses line item included in subdivision 2 of section 2 of this Act and identified as one-time funding in section 2 of this Act for oil and gas litigation expenses.
3. The sum of \$230,000 from the general fund in the operating expenses line item included in subdivision 2 of section 1 of this Act for computer server transition.
4. The sum of \$80,000 from the general fund in the operating expenses line item included in subdivision 2 of section 1 of this Act and identified as one-time funding in section 2 of this Act for computer server transition.
5. Sections 5 and 24 of this Act.
6. Senate Bill No. 2165, as approved by the sixty-eighth legislative assembly.

Approved May 5, 2023

Filed May 9, 2023

## CHAPTER 15

### HOUSE BILL NO. 1015

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of corrections and rehabilitation; to provide a statement of legislative intent; and to provide an exemption.

#### 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 purpose of defraying the expenses of the department of corrections and rehabilitation, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Adult services	\$258,140,591	\$161,033,061	\$419,173,652
Youth services	<u>24,584,845</u>	<u>2,026,590</u>	<u>26,611,435</u>
Total all funds	\$282,725,436	\$163,059,651	\$445,785,087
Less estimated income	<u>64,865,627</u>	<u>125,451,497</u>	<u>190,317,124</u>
Total general fund	\$217,859,809	\$37,608,154	\$255,467,963
Full-time equivalent positions	907.79	22.00	929.79

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Equipment	\$191,000	\$1,220,800
Kitchen equipment	115,000	0
Roughrider industries equipment	1,281,988	2,019,000
Roughrider industries storage warehouse	500,000	0
Federal payroll expenses	7,000,000	0
Radios	2,057,384	0
County jail stipends	4,800,000	0
Free through recovery program	2,995,200	0
Heart River correctional center facility	0	131,200,000
Inflationary costs	0	3,478,998
Transitional facility contract inflation	0	2,759,222
Dakota women's correctional and rehabilitation center contract	0	2,450,000
Dickinson adult detention center contract	0	1,003,434
Staff and resident development and training	0	100,000
Offender management system review	0	500,000
New cameras	0	275,000

Maintenance and extraordinary repairs	0	2,000,000
James River correctional center remodel	0	255,500
DOCSTARS maintenance	0	307,000
James River correctional center maintenance shop	0	1,550,000
Information technology needs	0	2,000,000
Roughrider industries supplies	0	4,083,681
Roughrider industries information technology costs	0	642,080
Roughrider industries cold storage	0	200,000
Roughrider industries paint line replacement	0	2,300,000
Total all funds	\$18,940,572	\$158,344,715
Less estimated income	<u>18,634,572</u>	<u>144,632,261</u>
Total general fund	\$306,000	\$13,712,454

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The department of corrections and rehabilitation shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. DEPARTMENT OF CORRECTIONS AND REHABILITATION OPERATING FUND REVENUES.** Any moneys received by the department of corrections and rehabilitation from correctional supervision, electronic monitoring, and detention; reimbursements from other agencies; profits received from department of corrections and rehabilitation commissary; miscellaneous revenue, including offender fines, fees, restitution, and medical copayments; and from the youth correctional center permanent fund, may be deposited in the department of corrections and rehabilitation operating fund and expended pursuant to legislative appropriation for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 4. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND.** The estimated income line item in section 1 of this Act includes \$135,057,000 from the strategic investment and improvements fund, including \$131,200,000 for a new Heart River correctional center facility, \$1,550,000 for a new James River correctional center maintenance shop, and \$2,307,000 for information technology needs.

**SECTION 5. HEART RIVER CORRECTIONAL CENTER FACILITY - LEGISLATIVE INTENT.** It is the intent of the sixty-eighth legislative assembly that the sixty-ninth legislative assembly appropriate \$30,000,000 to complete the construction of the new women's prison facility at the Heart River correctional center, for the biennium beginning July 1, 2025, and ending June 30, 2027.

**SECTION 6. HEART RIVER CORRECTIONAL CENTER FACILITY - STEERING COMMITTEE.** The department of corrections and rehabilitation shall establish a Heart River correctional center facility steering committee to oversee the design and construction of the new Heart River correctional center facility for the biennium beginning July 1, 2023, and ending June 30, 2025. The committee must include one member of the senate appointed by the senate majority leader, one member of the house appointed by the house majority leader, and one member of the minority party from either the senate or the house appointed by the minority leaders of the senate and the house.

**SECTION 7. EXEMPTION - COMMUNITY BEHAVIORAL HEALTH PROGRAM.** The amount of \$8,000,000 from the general fund appropriated for the community behavioral health program in section 1 of chapter 43 of the 2021 Session Laws is not subject to section 54-44.1-11, and any unexpended funds from this appropriation may

be used for the community behavioral health program during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 8. EXEMPTION - DEFERRED MAINTENANCE AND EXTRAORDINARY REPAIRS.** The amount of \$6,000,000 from the general fund appropriated to the department of corrections and rehabilitation in section 1 of chapter 15 of the 2019 Session Laws and continued in section 9 of chapter 43 of the 2021 Session Laws is not subject to section 54-44.1-11, and any unexpended funds from this appropriation may be used for deferred maintenance, capital planning, and extraordinary repairs projects by the department of corrections and rehabilitation during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 9. EXEMPTION - FEDERAL STATE FISCAL RECOVERY FUND.** Section 54-44.1-11 does not apply to the appropriation authority transferred from the office of management and budget to the department of corrections and rehabilitation from the amounts appropriated from federal funds derived from the state fiscal recovery fund in subsection 10 of section 1 of chapter 550 of the 2021 Special Session Session Laws, and any unexpended funds from this transferred appropriation authority may be used for the purpose of deferred maintenance and extraordinary repairs projects during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 10. EXEMPTION - FEDERAL STATE FISCAL RECOVERY FUND.** The amount of \$990,000 from federal funds derived from the state fiscal recovery fund appropriated to the department of corrections and rehabilitation for stipends to county jails for deferred admissions in subsection 4 of section 1 of chapter 550 of the 2021 Special Session Session Laws is not subject to section 54-44.1-11, and any unexpended funds from this appropriation may be continued and used for payments for deferred admissions during the biennium beginning July 1, 2023, and ending June 30, 2025.

Approved May 5, 2023

Filed May 9, 2023

## CHAPTER 16

### HOUSE BILL NO. 1016

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of job service North Dakota.

#### 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, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$28,994,942	\$4,898,290	\$33,893,232
Operating expenses	17,164,373	50,125,782	67,290,155
Capital assets	20,000	0	20,000
Grants	8,281,051	(226,539)	8,054,512
Reed Act - unemployment insurance computer modernization	<u>10,945,126</u>	<u>(30,126)</u>	<u>10,915,000</u>
Total all funds	\$65,405,492	\$54,767,407	\$120,172,899
Less estimated income	<u>64,995,263</u>	<u>48,598,789</u>	<u>113,594,052</u>
Total general fund	\$410,229	\$6,168,618	\$6,578,847
Full-time equivalent positions	156.61	2.00	158.61

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Unemployment insurance modernization project	\$0	\$45,000,000
Total other funds	\$0	\$45,000,000

The 2023-25 biennium one-time funding amounts are not part of the entity's base budget for the 2025-27 biennium. Job service North Dakota shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. ADDITIONAL INCOME - APPROPRIATION.** All federal funds received by job service North Dakota in excess of those funds appropriated in section 1 of this Act are appropriated to job service North Dakota for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 4. ESTIMATED INCOME - REED ACT FUNDS - UNEMPLOYMENT INSURANCE COMPUTER MODERNIZATION.** The estimated income line item in

section 1 of this Act includes the sum of \$10,915,000 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 federal Social Security Act. This sum, or so much of the sum as may be necessary, is for the purpose of developing a modernization unemployment insurance computer system.

**SECTION 5. ESTIMATED INCOME - UNEMPLOYMENT INSURANCE MODERNIZATION PROJECT - FEDERAL STATE FISCAL RECOVERY FUND - ONE-TIME FUNDING.** The estimated income line item in section 1 of this Act includes the sum of \$45,000,000 from federal funds derived from the state fiscal recovery fund for the unemployment insurance modernization project. This funding is considered a one-time funding item.

Approved April 12, 2023

Filed April 13, 2023

# CHAPTER 17

## HOUSE BILL NO. 1017

(Appropriations Committee)

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, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$1,298,644	\$119,373	\$1,418,017
Operating expenses	1,582,885	(493)	1,582,392
Total special funds	\$2,881,529	\$118,880	\$3,000,409
Full-time equivalent positions	5.00	0.00	5.00

**SECTION 2. ONE-TIME FUNDING.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Web-based document management system	<u>\$20,000</u>	<u>\$0</u>
Total special funds	\$20,000	\$0

Approved April 18, 2023

Filed April 19, 2023

## CHAPTER 18

### HOUSE BILL NO. 1018

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of commerce; to amend and reenact sections 6-09.18-01, 6-09.18-02, 6-09.18-03, 6-09.18-04, 6-09.18-05, 6-09.18-06, 6-09.18-07, 10-30.5-04, 10-30.5-05, 54-60-22, 54-60-28, 54-60-29, 54-60-29.1, 54-60.2-01, and 54-60.2-02 of the North Dakota Century Code and subsection 35 of section 1 of chapter 550 of the 2021 Special Session Session Laws, relating to the legacy investment for technology program, the North Dakota development fund, the workforce enhancement council, the administration of uncrewed aircraft system programs, workforce development grants to tribally controlled community colleges, and a North Dakota development fund grant program; to provide a transfer; to provide an exemption; to provide for a report; 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, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$12,835,431	\$2,622,805	\$15,458,236
Operating expenses	17,317,760	7,410,202	24,727,962
Grants	50,232,330	64,065,351	114,297,681
Discretionary funds	2,150,000	0	2,150,000
Workforce programs	0	28,500,000	28,500,000
COVID-19 response	0	16,739,696	16,739,696
Weatherization and energy programs	0	120,000,000	120,000,000
Partner programs	1,562,531	(654,611)	907,920
Entrepreneurship grants and vouchers	<u>948,467</u>	<u>0</u>	<u>948,467</u>
Total all funds	\$85,046,519	\$238,683,443	\$323,729,962
Less estimated income	<u>53,544,379</u>	<u>208,013,053</u>	<u>261,557,432</u>
Total general fund	\$31,502,140	\$30,670,390	\$62,172,530
Full-time equivalent positions	58.80	5.00	63.80

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Unmanned aircraft system	\$1,000,000	\$0
Beyond visual line of sight uncrewed aircraft system	20,000,000	26,000,000
Enhanced use lease grant	7,000,000	10,000,000

Workforce grants to tribally controlled community colleges	500,000	0
Workforce safety grant	1,500,000	0
Job development and economic growth grant	1,500,000	0
Tourism marketing	7,000,000	5,000,000
Tourism destination development initiative	0	25,000,000
Technical skills training grants	6,000,000	2,000,000
Motion picture production and recruitment grant	100,000	600,000
Creamery assistance grant	0	250,000
Travel agent and tour operator emergency resiliency grants	2,000,000	0
Event center emergency resiliency grants	2,000,000	0
Tourism transportation improvement grant	565,432	0
Discretionary funds	1,000,000	0
Small business credit initiative	56,234,176	572,143
Workforce community service Americorps program	1,074,888	785,000
Community development planning grants	1,000,000	0
Workforce innovation network grant program	100,000	0
North Dakota development fund	5,000,000	0
Autonomous agriculture grant program	10,000,000	0
Local workforce development incentive grant program	15,000,000	0
Rural workforce housing grant program	0	2,000,000
Workforce talent attraction initiative	0	12,000,000
Workforce investment grant program	0	12,500,000
Weatherization and energy assistance program	0	120,000,000
New Americans workforce training grants	0	2,000,000
Parks and recreation grants	0	1,550,000
Energy conservation grant program	0	14,081,719
Heating and cooling grant program	0	3,258,084
Total all funds	\$138,574,496	\$237,596,946
Less estimated income	135,409,064	208,246,946
Total general fund	\$3,165,432	\$29,350,000

The 2023-25 biennium one-time funding amounts are not part of the entity's base budget for the 2025-27 biennium. The department of commerce shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. TRANSFER - INTERNSHIP FUND.** The office of management and budget shall transfer \$1,006,896 of the amount appropriated in the operating expenses line item in section 1 of this Act to the internship fund for the purpose of administering the operation intern program, for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 4. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO LEGACY INVESTMENT FOR TECHNOLOGY FUND - INNOVATION TECHNOLOGY LOANS.** The office of management and budget shall transfer the sum of \$10,000,000 from the strategic investment and improvements fund to the legacy investment for technology fund for the purpose of providing legacy investment technology loans, for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 5. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO NORTH DAKOTA DEVELOPMENT FUND.** The office of management and budget shall transfer the sum of \$65,000,000 from strategic investment and improvements fund to the North Dakota development fund for programs under

chapter 10-30.5, during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 6. ESTIMATED INCOME - FEDERAL WEATHERIZATION AND ENERGY ASSISTANCE PROGRAMS - FULL-TIME EQUIVALENT POSITIONS.** The estimated income line item in section 1 of this Act includes \$120,000,000 from federal funds derived from the Infrastructure Investment and Jobs Act and the Inflation Reduction Act for weatherization and energy assistance programs. Of the full-time equivalent positions included in section 1 of this Act, three positions are for the administration of weatherization and energy assistance programs for the 2023-25 biennium. The full-time equivalent positions identified in this section are considered one-time positions.

**SECTION 7. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - LEGISLATIVE INTENT.** The estimated income line item in section 1 of this Act includes the sum of \$68,000,000 from the strategic investment and improvements fund, of which \$2,000,000 is for the rural workforce housing grant program, \$5,000,000 is for the tourism marketing awareness initiative, \$25,000,000 is for the tourism destination development initiative program, \$26,000,000 is for the beyond visual line of sight uncrewed aircraft system program, and \$10,000,000 is for the enhanced use lease grant program. It is the intent of the sixty-eighth legislative assembly that the department of commerce not hire a third-party consultant when determining how funding for the tourism destination development initiative program will be spent. The department of commerce may provide funding for the tourism destination development initiative program in the form of program grants or grants for interest rate buydowns but may not award more than \$5,000,000 for a project under this program.

**SECTION 8. RURAL WORKFORCE HOUSING GRANT PROGRAM.** The grants line item in section 1 of this Act includes \$1,500,000 from the strategic investment and improvements fund as identified in section 7 of this Act for the purpose of providing rural workforce housing grants. The department of commerce shall develop guidelines for the grants, including eligibility criteria, maximum grant awards, and reporting requirements. Grants may be awarded to cities with a population of fewer than 10,000 residents. Grant funding may be used to:

1. Conduct a housing study in the city to identify workforce housing needs, blighted property, and vacant lots within the city;
2. Purchase blighted properties or vacant lots;
3. Remove hazards or structures from blighted properties or vacant lots; and
4. Provide up to \$10,000 per business for repairs or improvements if the business is located in a mixed-use property that will be used for rural workforce housing.

**SECTION 9. WORKFORCE PROGRAMS.** The workforce programs line item in section 1 of this Act includes \$28,500,000 from the general fund for workforce-related programs, of which \$12,000,000 is for the workforce talent attraction initiative, \$12,500,000 is for the workforce investment grant program, \$2,000,000 is for technical skills training grants, and \$2,000,000 is for new Americans workforce development and training grants.

**SECTION 10. RURAL HEALTH CARE GRANT PROGRAM - MATCHING FUNDS REQUIREMENT.** The grants line item in section 1 of this Act includes

\$444,000 from the general fund for providing matching funds to an organization assisting in the recruitment, distribution, and supply, and enhancing the quality and efficiency of personnel providing health services in rural areas of the state. The department of commerce may spend the funds identified in this section only to the extent the organization has secured matching funds from nonstate sources on a dollar-for-dollar basis.

**SECTION 11. DISCRETIONARY FUNDS.** Of the funding appropriated from the general fund in the discretionary funds line item in section 1 of this Act, \$150,000 is designated for supporting the continuation of the North Dakota state magazine with the current publisher of the magazine, \$350,000 is designated for supporting an organization dedicated to assisting native American small businesses in North Dakota, and \$350,000 is designated for providing base retention grant funding to eligible organizations in Minot.

**SECTION 12. ENTREPRENEURSHIP GRANTS AND VOUCHER PROGRAM.** The entrepreneurship grants and voucher line item in section 1 of this Act includes \$948,467, of which \$740,956 is from the general fund and \$207,511 is from the economic development fund, for the purpose of defraying the expenses of the entrepreneurship grants and voucher program. The department shall establish guidelines to provide grants under the program.

**SECTION 13. AMENDMENT.** Section 6-09.18-01 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.18-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Commissioner" means the commissioner of the department of commerce.
2. "Committee" means the ~~innovation loan fund to support technology advancement~~ legacy investment for technology committee.
3. "Diversification sectors" means the following industries:
  - a. Advanced computing and data management;
  - b. Agriculture technology;
  - c. Autonomous and ~~unmanned~~ uncrewed vehicles and related technologies;
  - d. Energy;
  - e. Health care;
  - f. Value-added agriculture;
  - g. Value-added energy; and
  - h. Any industry or area specifically identified by the committee as an industry that will contribute to the diversification of the state's economy.

**SECTION 14. AMENDMENT.** Section 6-09.18-02 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.18-02. Innovation loan fund to support technology advancementLegacy investment for technology committee - Membership - Meetings.**

1. The ~~innovation loan fund to support technology advancementLegacy investment for technology~~ committee consists of:
  - a. The commissioner or the commissioner's designee who shall serve as the chairperson of the committee and is a nonvoting member of the committee;
  - b. Three members representing active venture capital firms, private entities, or angel capital funds;
  - c. One member with finance-related experience, knowledge, or education; and
  - d. Three members from the private sector with expertise in the diversification sectors.
2. The commissioner, in consultation with the president of the Bank of North Dakota, shall appoint the members of the committee. The term of office of the appointed members of the committee is four years, and the terms must be staggered so that no more than one of the members' terms appointed under subdivisions b and c of subsection 1 expires each year, and so that no more than one of the members' terms appointed under subdivision d of subsection 1 expires each year. Each term of office commences on the first day of July. Members serve at the pleasure of the commissioner and may be reappointed for additional terms. Members of the committee may not invest or otherwise participate in applied research, experimentation, or operational testing associated with a loan awarded under this chapter. If a committee member appointed under subdivision b of subsection 1 ceases to represent an active venture capital firm, private entity, or angel capital fund, that individual's membership on the committee ceases immediately and the commissioner, in consultation with the president of the Bank of North Dakota, shall appoint a new member to the committee for the remainder of the term.
3. A committee member representing the private sector is eligible to receive compensation in an amount not exceeding one hundred thirty-five dollars per day and travel and expense reimbursement as provided by law for state officers for attending meetings of the committee.
4. The committee shall meet as necessary to make loan recommendations and provide ongoing review of research, development, and commercialization activities.

**SECTION 15. AMENDMENT.** Section 6-09.18-03 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.18-03. Innovation loan fund to support technology advancement--InnovationLegacy investment technology loan program.**

The department of commerce shall administer the ~~innovationLegacy investment~~ technology loan program in consultation with the Bank of North Dakota to provide loans for activities identified in this chapter. The department of commerce shall provide administrative support for the program, including the drafting of application forms, receiving applications, reviewing applications for completeness and

compliance with committee policy, and forwarding complete applications to the committee in accordance with the guidelines established by the committee. Program guidelines relating to ownership of intellectual property, inventions, and discoveries must address activities and issues unique to technologies, patents, and companies created as a result of a legacy ~~innovation~~investment technology loan.

**SECTION 16. AMENDMENT.** Section 6-09.18-04 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.18-04. ~~Innovation~~Legacy investment technology loans - Eligibility.**

1. The committee shall establish guidelines for entities to qualify for an ~~innovation~~a legacy investment technology loan under this section. The committee shall consider and process applications in a timely manner that does not jeopardize an applicant's opportunity to leverage other funds.
2. In determining whether to recommend approval of an application, the committee shall consider the extent to which the proposal will:
  - a. Deliver applied research, experimentation, or operational testing in one or more of the diversification sectors to create information or data to enhance North Dakota companies or industries or companies making investments in North Dakota;
  - b. Lead to the commercialization or patent of an innovation technology solution; or
  - c. Result in the development of a new company or expansion of an existing company that will diversify the state's economy through new products, investment, or skilled jobs.
3. The Bank of North Dakota shall review the business plan, financial statements, and other information necessary for the Bank to determine which applications recommended for approval by the committee will be approved by the Bank for final loan approval. The terms of the loan must include:
  - a. Zero percent interest for the first three years of the loan;
  - b. Two percent interest for the next two years of the loan; and
  - c. An interest rate equal to a standard Bank of North Dakota loan for all subsequent years.
4. To be eligible for a loan under this chapter, an entity shall agree to provide the Bank of North Dakota with information as requested by the Bank.

<sup>3</sup> **SECTION 17. AMENDMENT.** Section 6-09.18-05 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.18-05. ~~Innovation loan fund to support technology advancement~~Legacy investment for technology fund - Continuing appropriation.**

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<sup>3</sup> Section 6-09.18-05 was also amended by section 11 of Senate Bill No. 2233, chapter 95.

The ~~innovation loan fund to support technology advancement~~legacy investment for technology fund is a special fund in the state treasury and must be administered by the department of commerce. All moneys in the fund are appropriated to the department of commerce on a continuing basis for the purpose of providing ~~innovation~~legacy investment technology loans and for administrative expenses. The department of commerce shall deposit in the ~~innovation loan fund to support technology advancement~~legacy investment for technology fund all principal and interest paid on loans made from the fund. Interest earned on moneys in the fund must be credited to the fund.

**SECTION 18. AMENDMENT.** Section 6-09.18-06 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.18-06. Use of loan funds.**

Loan recipients shall use ~~innovation~~legacy investment technology loan funds to enhance capacity and, to the extent possible, leverage state, federal, and private sources of funding. An entity receiving a loan under this chapter may not use the funds for capital or building investments or for research or other activities not identified in this chapter. The funds may not be used for academic or instructive programming, workforce training, administrative costs, or to supplant funding for regular operations of institutions of higher education. Unless otherwise approved by the committee, loan recipients may use funding only to conduct applied research, experimentation, or operational testing within the state. If an entity awarded a loan no longer conducts its activities in the state, the interest rate of the loan shall default to the rate of a standard Bank of North Dakota loan.

**SECTION 19. AMENDMENT.** Section 6-09.18-07 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.18-07. ~~Innovation loan fund to support technology advancement~~—  
Postaward monitoring.**

Upon completion of work performed from funding provided by a legacy investment technology loan, the department of commerce shall provide an independent review of the results. Evaluation criteria may include:

1. How the work performed has contributed to the development of a company or the expansion of an existing company, has enhanced the ability of a company to make investments in the state, or otherwise enticed a company to invest or move to the state.
2. How the work performed has led to additional economic investment of capital from public and private sector entities within and outside North Dakota.
3. How the work performed has led to or may lead to a patent or research that is commercially viable.

**SECTION 20. AMENDMENT.** Section 10-30.5-04 of the North Dakota Century Code is amended and reenacted as follows:

**10-30.5-04. 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, and provide funding to 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 10-30.5-12 may not exceed one million dollars.
3. Provide management services for the Bank's alternative and venture capital investments and early-stage capital funds.

**SECTION 21. AMENDMENT.** Section 10-30.5-05 of the North Dakota Century Code is amended and reenacted as follows:

**10-30.5-05. Management.**

1. The director of the department of commerce division of economic development and finance shall appoint the chief executive officer of the corporation. The board of directors shall determine minimum qualifications of all other staff positions.
2. If the chief executive officer of the corporation is absent for more than five consecutive days or is anticipated to be absent for more than five consecutive days, the chief executive officer may delegate the duties and responsibilities of the chief executive officer to the director of the department of commerce division of economic development and finance, or the director's designee.
3. All investments, contracts, partnerships, limited liability companies, and business transactions of the corporation are the responsibility of the chief executive officer and the board of directors. The board may provide that normal operating costs anticipated in an approved budget may be incurred and paid without prior board approval.

**SECTION 22. AMENDMENT.** Section 54-60-22 of the North Dakota Century Code is amended and reenacted as follows:

**54-60-22. Workforce enhancement council - Grants.**

The workforce enhancement council shall recommend to the commissioner the approval of grants to training providers, businesses, and institutions of higher education assigned primary responsibility for workforce training in this state to be used to create or enhance training programs that address workforce needs of private sector companies. A grant made under this section may be used for curriculum development, equipment, recruitment of participants, and training and certification for instructors but may not be used to supplant funding for current operations. The department may distribute funds under this section after:

1. The division of workforce development certifies that a proposed training program meets a critical workforce shortage in a target industry or other high-demand occupation and is expected to lead to employment in this state; and
2. The proposed recipient provides the department with detailed documentation of private sector participation, including the availability of one dollar of matching funds for each dollar of state funds.

**SECTION 23. AMENDMENT.** Section 54-60-28 of the North Dakota Century Code is amended and reenacted as follows:

**54-60-28. UnmannedUncrewed aircraft systems program - Report to legislative management.**

The department may ~~establish~~operate and administer an ~~unmanneduncrewed~~ aircraft systems test site, contingent upon receiving official designation by the federal aviation administration. The department ~~shall~~may cooperate and ~~contract~~ with the university of North Dakota, the North Dakota aeronautics commission, the adjutant general, and ~~other public or private parties appointed by the governor~~entities as determined by the commissioner in the ~~operation and~~ administration of the test site. The department may charge fees sufficient to operate the test site. The department shall, to the extent possible, use competitive bidding in the ~~establishment~~operation and administration of the test site. The commissioner may charter a public corporation to operate the test site. The corporation must possess all of the powers of a business corporation consistent with this chapter. The department shall report to the legislative management semiannually on the status of the program.

**SECTION 24. AMENDMENT.** Section 54-60-29 of the North Dakota Century Code is amended and reenacted as follows:

**54-60-29. UnmannedUncrewed aircraft systems program fund - Continuing appropriation.**

1. There is created in the state treasury a special fund known as the ~~unmanneduncrewed~~ aircraft systems fund, which may be used to defray the expenses of the:
  - a. Operations of an ~~unmanneduncrewed~~ aircraft systems test site officially designated by the federal aviation administration;
  - b. Beyond visual line of sight ~~unmanneduncrewed~~ aircraft system program; and
  - c. Enhanced use lease grant program.
2. The fund consists of fees collected for the administration of the test site and other funds appropriated by the legislative assembly. All moneys in the fund are appropriated to the department of commerce on a continuing basis for the purpose of defraying the expenses of the programs identified in subsection 1. Interest earned on moneys in the fund must be credited to the fund.

**SECTION 25. AMENDMENT.** Section 54-60-29.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-60-29.1. Beyond visual line of sight unmanneduncrewed aircraft system program - Requirements - Report to legislative management.**

The department may establish and administer a beyond visual line of sight ~~unmanneduncrewed~~ aircraft system program for the design, purchase, implementation, and operating costs of a beyond visual line of sight ~~unmanneduncrewed~~ aircraft system. The department shall require any entity receiving funding for this program which is operating the beyond visual line of sight ~~unmanneduncrewed~~ aircraft system to provide quarterly payments to the state treasurer ~~equal to three percent of the entity's gross income associated with the operation of the beyond visual line of sight unmanned aircraft system as reported in~~

~~the entity's prior year financial statements based on a fee structure determined by the commissioner.~~ The state treasurer shall deposit any funds received under this section in the state general fund. The department shall provide semiannual reports to the legislative management regarding the development of the beyond visual line of sight ~~unmanned~~uncrewed aircraft system program and the total amount deposited by the state treasurer in the state general fund.

**SECTION 26. AMENDMENT.** Section 54-60.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-60.2-01. Establishment of workforce development grant for tribally controlled community colleges.**

There is established within the division of workforce development of the department of commerce a program to provide workforce development grants to tribally controlled community colleges in North Dakota. A tribally controlled community college in this state may apply to the department of commerce for a job training grant in such manner as the department of commerce prescribes. The department of commerce shall consult with the executive director of the Indian affairs commission to determine eligible tribally controlled community colleges ~~and shall award grants based on the documented job placement rates at each eligible college.~~

**SECTION 27. AMENDMENT.** Section 54-60.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-60.2-02. Purpose of grants.**

1. ~~Any~~A grant awarded under section 54-60.2-01 may be used at the discretion of the college:
  - a. ~~For development or enhancement of~~To develop or enhance programs that assist in providing certificates or degrees to North Dakota students attending the college that qualify the student to obtain jobs for which applicants are being sought within the state, as identified by the department of commerce, job service North Dakota, or any of the federally recognized Indian tribes within North Dakota; ~~or~~
  - b. To assist any North Dakota student attending the college to establish, or to assist in establishing, a new business operating within North Dakota that will employ North Dakota citizens; ~~or~~
  - c. To develop or enhance career and technical education programs.
2. Any funds provided to tribally controlled community colleges must be used to supplement, not supplant, ~~any~~an existing program or funding source of the college.

**SECTION 28. AMENDMENT.** Subsection 35 of section 1 of chapter 550 of the 2021 Special Session Session Laws is amended and reenacted as follows:

35. There is appropriated from federal funds derived from the state fiscal recovery fund, not otherwise appropriated, the sum of \$5,000,000, which the office of management and budget shall transfer to the North Dakota development fund under chapter 10-30.5 for the purpose of a North Dakota development fund grant program during the period beginning with the effective date of this Act, and ending June 30, 2023.

**SECTION 29. EXEMPTION - UNEXPENDED APPROPRIATIONS.** The following appropriations are not subject to the provisions of section 54-44.1-11 and may be continued into the biennium beginning July 1, 2023, and ending June 30, 2025:

1. The sum of \$320,000 that was continued into the 2021-23 biennium in section 17 of chapter 46 of the 2021 Session Laws from the appropriation from the general fund for the nonresident nurse employment recruitment program in section 27 of chapter 40 of the 2019 Session Laws;
2. The sum of \$11,393,078 appropriated from federal funds derived from the Coronavirus Aid, Relief, and Economic Security Act, of which \$3,000,000 was for the community development block grant program, \$7,393,078 was for the community services block grant program, and \$1,000,000 was for the emergency solutions grant program in section 1 of chapter 27 of the 2021 Session Laws;
3. The sum of \$56,234,176 appropriated from federal funds derived from COVID-19 response funds for the state small business credit initiative program in section 2 of chapter 28 of the 2021 Session Laws;
4. The sum of \$2,150,000 appropriated from the general fund for discretionary funds in section 1 of chapter 46 of the 2021 Session Laws;
5. The sum of \$1,500,000 appropriated from the strategic investment and improvements fund for a job development and economic growth grant in section 1 of chapter 46 of the 2021 Session Laws;
6. The sum of \$3,000,000 appropriated from the general fund for the unmanned aircraft system program in section 1 of chapter 46 of the 2021 Session Laws;
7. The sum of \$19,000,000 appropriated from the strategic investment and improvements fund for the beyond visual line of sight unmanned aircraft system program in section 1 of chapter 46 of the 2021 Session Laws;
8. The sum of \$1,000,000 appropriated from the general fund for beyond visual line of sight unmanned aircraft system program matching funds in section 1 of chapter 46 of the 2021 Session Laws and amended in section 22 of chapter 549 of the 2021 Special Session Session Laws;
9. The sum of \$7,000,000 appropriated from the strategic investment and improvements fund for the enhanced use lease grant program in section 1 of chapter 46 of the 2021 Session Laws;
10. The sum of \$1,330,212 appropriated from the general fund for the homeless shelter grant program in section 1 of chapter 46 of the 2021 Session Laws;
11. The sum of \$1,074,888 appropriated from federal funds for the workforce community services Americorps program in section 19 of chapter 549 of the 2021 Special Session Session Laws;
12. The sum of \$1,000,000 appropriated from federal funds for the community development planning grant program in section 20 of chapter 549 of the 2021 Special Session Session Laws;
13. The sum of \$10,000,000 appropriated from federal funds derived from the state fiscal recovery fund for autonomous agriculture matching grants in

subsection 37 of section 1 of chapter 550 of the 2021 Special Session Session Laws, which shall be awarded without any matching fund requirements;

14. The sum of \$15,000,000 appropriated from federal funds derived from the state fiscal recovery fund for the workforce development incentive grant program in subsection 38 of section 1 of chapter 550 of the 2021 Special Session Session Laws; and
15. The sum of \$5,000,000 appropriated from federal funds derived from the state fiscal recovery fund for the technical skills training grants program in subsection 39 of section 1 of chapter 550 of the 2021 Special Session Session Laws.

**SECTION 30. LEGISLATIVE MANAGEMENT REPORT - DEPARTMENT OF COMMERCE GRANT PROGRAMS.** During the 2023-24 interim, the department of commerce shall report to the legislative management regarding the status of each grant program identified in section 2 of this Act derived from the general fund or state special funds, including funding spent to date, the number of individuals or businesses awarded funding, the name and amount of funding awarded to each individual and business, the date funding was awarded, criteria used when awarding funding, and a detailed listing of how the funding has been used. The department of commerce shall provide one report by December 31, 2023, and no fewer than two reports during the period beginning January 1, 2024, and ending October 31, 2024.

**SECTION 31. EMERGENCY.** The following are declared to be an emergency measure:

1. The \$120,000,000 appropriated from federal funds derived from the Infrastructure Investment and Jobs Act and the Inflation Reduction Act for weatherization and energy programs in the weatherization and energy programs line item and in the estimated income line item in section 1 of this Act; and
2. The \$26,000,000 appropriated from the strategic investment and improvements fund for the beyond visual line of sight uncrewed aircraft system program in the grants line item and in the estimated income line item in section 1 of this Act.

Approved May 6, 2023

Filed May 9, 2023

**CHAPTER 19**

**HOUSE BILL NO. 1019**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of career and technical education; and to provide an exemption.

**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 career and technical education for the purpose of defraying the expenses of the department of career and technical education, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$4,643,906	\$340,305	\$4,984,211
Operating expenses	2,198,453	847,897	3,046,350
Grants	9,507,349	2,500,000	12,007,349
Grants - secondary	26,837,780	14,700,000	41,537,780
Marketplace for kids	300,000	0	300,000
Science, technology, engineering, and mathematics initiative	100,000	0	100,000
Adult farm management	1,706,138	0	1,706,138
Workforce training	2,000,000	500,000	2,500,000
Center for distance education	<u>9,461,254</u>	<u>(9,461,254)</u>	<u>0</u>
Total all funds	\$56,754,880	\$9,426,948	\$66,181,828
Less estimated income	<u>15,019,817</u>	<u>(38,697)</u>	<u>14,981,120</u>
Total general fund	\$41,735,063	\$9,465,645	\$51,200,708
Full-time equivalent positions	50.30	(26.80)	23.50

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Statewide area career center initiative grant program	\$88,276,228	\$0
Secondary career and technical education programs	<u>0</u>	<u>500,000</u>
Total other funds	\$88,276,228	\$500,000

The 2023-25 biennium one-time funding amounts are not part of the entity's base budget for the 2025-27 biennium. The department of career and technical education shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - SECONDARY CAREER AND TECHNICAL EDUCATION PROGRAMS.** The estimated income line item in section 1 of this Act includes \$500,000 from the strategic investment and improvements fund for new and expanding secondary career and technical education programs.

**SECTION 4. EXEMPTION - STATEWIDE AREA CAREER CENTER INITIATIVE GRANT PROGRAM.** The amount of \$20,000,000 appropriated from federal funds derived from the state fiscal recovery fund for the statewide area career center initiative grant program in section 1 of chapter 548 of the 2021 Special Session Laws is not subject to section 54-44.1-11 and is available for the program during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 5. EXEMPTION - STATEWIDE AREA CAREER CENTER INITIATIVE GRANT PROGRAM - UNCOMMITTED FUNDS.** Notwithstanding section 1 of chapter 548 of the 2021 Special Session Laws, if funding approved for a career academy project under the statewide area career center initiative grant program becomes uncommitted after December 31, 2022, the department of career and technical education may redistribute the funding for existing projects under the program during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 6. WORKFORCE TRAINING GRANTS - SALARIES AND WAGES EXPENSES.** The workforce training line item in section 1 of this Act includes the sum of \$500,000 from the general fund which the department of career and technical education shall distribute to each eligible organization in the state dedicated to expanding workforce opportunities, training, and education for the purpose of defraying salaries and wages expenses of the organization's employees. The department of career and technical education shall distribute the funding identified in this section as follows:

1. An organization in the northwest region of the state \$230,000
2. An organization in the northeast region of the state \$40,000
3. An organization in the southwest region of the state \$120,000
4. An organization in the southeast region of the state \$110,000

Approved May 6, 2023

Filed May 9, 2023

**CHAPTER 20**

**HOUSE BILL NO. 1020**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the North Dakota state university extension service, northern crops institute, upper great plains transportation institute, main research center, branch research centers, and agronomy seed farm; to provide for a report; to provide for a transfer; 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 with the effective date of this Act and ending June 30, 2025, as follows:

Subdivision 1.

**NORTH DAKOTA STATE UNIVERSITY EXTENSION SERVICE**

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Extension service	\$56,530,224	\$2,002,613	\$58,532,837
Soil conservation committee	1,211,520	150,000	1,361,520
Total all funds	\$57,741,744	\$2,152,613	\$59,894,357
Less estimated income	28,303,921	682,222	28,986,143
Total general fund	\$29,437,823	\$1,470,391	\$30,908,214
Full-time equivalent positions	241.77	10.93	252.70

Subdivision 2.

**NORTHERN CROPS INSTITUTE**

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Northern crops institute	\$3,909,760	\$5,640,941	\$9,550,701
Total all funds	\$3,909,760	\$5,640,941	\$9,550,701
Less estimated income	1,922,618	5,517,827	7,440,445
Total general fund	\$1,987,142	\$123,114	\$2,110,256
Full-time equivalent positions	13.55	4.60	18.15

Subdivision 3.

**UPPER GREAT PLAINS TRANSPORTATION INSTITUTE**

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Upper great plains transportation institute	\$23,527,957	\$1,570,236	\$25,098,193
Total all funds	\$23,527,957	\$1,570,236	\$25,098,193
Less estimated income	<u>19,042,350</u>	<u>959,427</u>	<u>20,001,777</u>
Total general fund	\$4,485,607	\$610,809	\$5,096,416
Full-time equivalent positions	43.88	0.00	43.88

Subdivision 4.

#### MAIN RESEARCH CENTER

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Main research center	<u>\$111,676,188</u>	<u>\$107,718,315</u>	<u>\$219,394,503</u>
Total all funds	\$111,676,188	\$107,718,315	\$219,394,503
Less estimated income	<u>57,087,956</u>	<u>102,288,358</u>	<u>159,376,314</u>
Total general fund	\$54,588,232	\$5,429,957	\$60,018,189
Full-time equivalent positions	334.56	23.91	358.47

Subdivision 5.

#### BRANCH RESEARCH CENTERS

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Dickinson research center	\$7,078,838	\$153,874	\$7,232,712
Central grasslands research center	3,553,320	42,199	3,595,519
Hettinger research center	5,174,885	123,393	5,298,278
Langdon research center	3,091,310	74,729	3,166,039
North Central research center	5,203,251	74,501	5,277,752
Williston research center	5,362,734	115,922	5,478,656
Carrington research center	<u>9,827,963</u>	<u>239,286</u>	<u>10,067,249</u>
Total all funds	\$39,292,301	\$823,904	\$40,116,205
Less estimated income	<u>20,722,818</u>	<u>228,047</u>	<u>20,950,865</u>
Total general fund	\$18,569,483	\$595,857	\$19,165,340
Full-time equivalent positions	108.21	3.60	111.81

Subdivision 6.

#### AGRONOMY SEED FARM

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Agronomy seed farm	<u>\$1,579,655</u>	<u>\$50,109</u>	<u>\$1,629,764</u>
Total special funds	\$1,579,655	\$50,109	\$1,629,764
Full-time equivalent positions	3.00	0.00	3.00

Subdivision 7.

#### SECTION 1 TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$109,068,287	\$8,230,128	\$117,298,415

Grand total other funds	<u>128,659,318</u>	<u>109,725,990</u>	<u>238,385,308</u>
Grand total all funds	\$237,727,605	\$117,956,118	\$355,683,723

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 biennium one-time funding items included in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Deferred maintenance	\$500,000	\$500,000
Transportation data intelligence center	0	432,600
Northern crops institute feed production center facility upgrade	0	3,250,000
Pellet mill	0	650,000
Storage sheds	0	1,900,000
Nesson Valley irrigation research site project	0	1,700,000
Branch research extension centers capital projects inflation	0	2,933,230
Hettinger research extension center land purchase	0	1,038,000
Waldron hall replacement project	0	97,000,000
Carrington research extension center capital projects	1,221,000	0
Central grasslands research extension center capital projects	2,488,000	0
Dickinson research extension center capital projects	2,200,000	0
Hettinger research extension center capital projects	3,720,000	0
Langdon research extension center capital projects	473,000	0
Remote sensing of infrastructure	<u>2,225,000</u>	<u>0</u>
Total all funds	\$12,827,000	\$109,403,830
Total other funds	<u>12,327,000</u>	<u>105,695,600</u>
Total general fund	\$500,000	\$3,708,230

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2023-25 biennium. The upper great plains transportation center, northern crops institute, and main research center shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. DICKINSON RESEARCH EXTENSION CENTER - MINERAL RIGHTS INCOME.** The Dickinson research extension center may spend up to \$755,000 of revenues received during the 2023-25 biennium from mineral royalties, leases, or easements for ongoing operational expenses. Any revenues received in excess of \$755,000 may be spent only for one-time expenditures for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 4. WILLISTON RESEARCH EXTENSION CENTER - MINERAL RIGHTS INCOME - REPORT.** The Williston research extension center shall report to the sixty-ninth legislative assembly on amounts received and spent from mineral royalties, leases, or easements in the biennium beginning July 1, 2021, and ending June 30, 2023, and the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 5. ADDITIONAL INCOME - APPROPRIATION.** In addition to the amount included in the grand total other 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, 2023, and ending June 30, 2025.

**SECTION 6. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - UPPER GREAT PLAINS TRANSPORTATION INSTITUTE - NORTHERN CROPS INSTITUTE - MAIN RESEARCH CENTER.** The estimated income line item in subdivision 2 of section 1 of this Act includes the sum of \$3,900,000 from the strategic investment and improvements fund for the northern crops institute feed production center facility upgrade and pellet mill. The estimated income line item in subdivision 3 of section 1 of this Act includes the sum of \$432,600 from the strategic investment and improvements fund for a transportation data intelligence center. The estimated income line item in subdivision 4 of section 1 of this Act includes the sum of \$89,400,000 from the strategic investment and improvements fund for the Waldron hall replacement project, storage sheds, and deferred maintenance.

**SECTION 7. ESTIMATED INCOME - FEDERAL STATE FISCAL RECOVERY FUND - NORTH DAKOTA STATE UNIVERSITY MAIN RESEARCH CENTER - PURCHASE OF LAND AUTHORIZED.** The appropriation in subdivision 4 of section 1 of this Act includes the sum of \$1,038,000 from federal funds derived from the state fiscal recovery fund for the purchase of real property for the Hettinger research center, for the biennium beginning July 1, 2023, and ending June 30, 2025. The Hettinger research center shall make payments in lieu of property taxes in the manner and according to the conditions and procedures that would apply if the property were privately owned. The North Dakota state university main research center is authorized to purchase four parcels of land in Adams County, described as:

1. The southeast quarter of section 24, township 129 north, range 96, Adams County;
2. A tract of land in the northeast quarter of the southeast quarter of section 13, township 129 north, range 96, Adams County;
3. The southeast quarter of the southeast quarter of section 13, the north half of the northeast quarter of section 24, township 129 north, range 96, Adams County; and
4. The north half of the north half of section 19, township 129 north, range 95, Adams County.

**SECTION 8. NORTH DAKOTA STATE UNIVERSITY MAIN RESEARCH CENTER - POTATO FAST TRACK.** The estimated income line item in subdivision 4 of section 1 of this Act includes \$250,000 from other funds for the potato fast track program to accelerate potato variety development efforts at the North Dakota state university main research center for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 9. EXEMPTION - TRANSFER AUTHORITY.** Notwithstanding section 54-16-04, upon approval of the state board of agricultural research and education and appropriate branch research center directors, the director of the office of management and budget shall transfer appropriation authority within subdivisions 1, 2, 4, and 5 of section 1 of this Act.

**SECTION 10. EXEMPTION - FULL-TIME EQUIVALENT POSITION ADJUSTMENTS - REPORT.** Notwithstanding any other provisions of law, the state 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. All full-time or part-time positions must be separate from North Dakota state university. Annually, the board shall report to the office of management and budget and to the budget section any adjustments made pursuant to this section.

**SECTION 11. EXEMPTION - UNEXPENDED GENERAL FUND - EXCESS INCOME.** Any unexpended general fund appropriation authority available 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, 2025, and ending June 30, 2027.

**SECTION 12. EXEMPTION - BRANCH RESEARCH CENTERS PROJECTS.** The amounts appropriated from other funds for Carrington research center capital projects, central grasslands research center capital projects, and Langdon research center capital projects in subdivision 4 of section 1 of chapter 48 of the 2021 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, 2023, and ending June 30, 2025.

**SECTION 13. EXEMPTION - BRANCH RESEARCH CENTERS PROJECTS - FEDERAL STATE FISCAL RECOVERY FUND.** The amounts appropriated from federal funds derived from the state fiscal recovery fund for one-time projects at the Carrington research center, central grasslands research center, Dickinson research center, and Hettinger research center in section 6 of chapter 550 of the 2021 Special Session Session Laws are 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, 2023, and ending June 30, 2025.

**SECTION 14. EXEMPTION - MAIN RESEARCH CENTER - PUBLIC IMPROVEMENT CONSTRUCTION.** The main research center, for its use of the \$2,400,000 appropriated from the strategic investment and improvements fund for deferred maintenance and branch research center storage sheds, is not subject to the provisions of section 48-01.2-02.1, and the main research center may spend this funding without procuring plans, drawings, and specifications from an architect or engineer.

**SECTION 15. EMERGENCY.** The \$87,000,000 appropriated from the strategic investment and improvements fund and \$10,000,000 appropriated from other funds for the Waldron hall replacement project in subdivision 4 of section 1 of this Act is declared to be an emergency measure.

Approved May 8, 2023

Filed May 9, 2023

## CHAPTER 21

### HOUSE BILL NO. 1021

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the information technology department; to amend and reenact subsection 2 of section 54-46-08 of the North Dakota Century Code as amended in section 5 of House Bill No. 1528, as approved by the sixty-eighth legislative assembly, relating to final disposition of records; to provide a transfer; to provide an exemption; to provide for a report; 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 the information technology department, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$101,734,629	\$2,637,257	\$104,371,886
Operating expenses	114,588,112	34,416,587	149,004,699
Capital assets	3,443,909	466,662	3,910,571
Statewide longitudinal data system	4,486,278	1,096,400	5,582,678
Edutech	9,691,939	472,369	10,164,308
K-12 wide area network	4,679,718	1,682,892	6,362,610
Geographic information system	1,101,806	106,086	1,207,892
Health information technology office	8,725,871	16,240	8,742,111
Statewide interoperable radio network	14,193,796	4,207,673	18,401,469
Broadband infrastructure	<u>0</u>	<u>148,250,000</u>	<u>148,250,000</u>
Total all funds	\$262,646,058	\$193,352,166	\$455,998,224
Less estimated income	<u>233,670,105</u>	<u>179,267,274</u>	<u>412,937,379</u>
Total general fund	\$28,975,953	\$14,084,892	\$43,060,845
Full-time equivalent positions	479.00	28.00	507.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Cybersecurity	\$6,500,000	\$0
Health information technology office	6,000,000	3,000,000
Broadband infrastructure grants	45,000,000	0
North Dakota stockmen's association grant	401,000	0
Enterprise digitization project	0	7,000,000

Call center software upgrade project	0	3,000,000
Governance, risk, and compliance costs	0	5,456,876
Customer relationship management program	0	5,000,000
Universal vulnerability management project	0	1,000,000
Capitol security upgrade and fiber replacement project	0	2,499,467
Inflationary increases	0	7,325,000
Statewide longitudinal data system	0	1,075,000
Broadband, equity, access, and deployment program	0	147,762,480
State and local cybersecurity grant program	0	487,520
Total all funds	\$57,901,000	\$183,606,343
Less estimated income	<u>57,901,000</u>	<u>179,093,823</u>
Total general fund	\$0	\$4,512,520

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The information technology department shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. ESTIMATED INCOME - TRANSFER - HEALTH INFORMATION TECHNOLOGY PLANNING LOAN FUND TO ELECTRONIC HEALTH INFORMATION EXCHANGE FUND.** Notwithstanding section 6-09-43, the estimated income line item in section 1 of this Act includes the sum of \$3,000,000, or so much of the sum as may be necessary, which the Bank of North Dakota shall transfer, as requested by the chief information officer, from the health information technology planning loan fund to the electronic health information exchange fund for the purpose of defraying the expenses of the health information technology office and the health information network during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 4. EXEMPTION - LINE ITEM TRANSFERS.** Notwithstanding section 54-16-04, the director of the office of management and budget shall make transfers of funds between 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. The department shall notify the legislative council of any transfers made pursuant to this section.

**SECTION 5. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND.** The estimated income line item in section 1 of this Act includes the sum of \$15,000,000 from the strategic investment and improvements fund, of which \$7,000,000 is for the enterprise digitization project, \$3,000,000 is for the call center software upgrade project, and \$5,000,000 is for the customer relationship management program.

**SECTION 6. ESTIMATED INCOME - FEDERAL STATE FISCAL RECOVERY FUND.** The estimated income line item in section 1 of this Act includes the sum of \$3,499,467 from federal funds derived from the state fiscal recovery fund, of which \$2,499,467 is for the capitol security software upgrade and fiber replacement project and \$1,000,000 is for the universal vulnerability management project.

**SECTION 7. ESTIMATED INCOME - CHOICE READY DASHBOARD EXPANSION PROJECT.** The estimated income line item in section 1 of this Act includes the sum of \$4,856,876 from the information technology department operating service fund for department of public instruction-related projects, of which \$300,000 is

for a choice ready dashboard expansion project to allow schools to monitor student progress for graduation and report the results to the department of public instruction.

**4 SECTION 8. AMENDMENT.** Subsection 2 of section 54-46-08 of the North Dakota Century Code as amended in section 5 of House Bill No. 1528, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

2. Each departmental agency shall maintain, for at least one year, data contained in electronic mail accounts ~~and personal file storage~~, for agency heads, state officers appointed by the governor under chapter 44-02, and elected executive branch officials.

**SECTION 9. EXEMPTION - BROADBAND INFRASTRUCTURE GRANTS.** The amount of \$45,000,000 appropriated from federal funds derived from the coronavirus capital projects fund for the broadband infrastructure grants program in section 9 of chapter 548 of the 2021 Special Session Session Laws is not subject to section 54-44.1-11 and is available for the program during the biennium beginning July 1, 2023, and ending June 30, 2025. The information technology department shall approve any grant application that includes the use or implementation of fiber-optic cable in the proposed service area unless fiber-optic cable currently serves the proposed service area.

**SECTION 10. EXEMPTION - BROADBAND INFRASTRUCTURE GRANTS - FEDERAL CORONAVIRUS CAPITAL PROJECTS FUND - TRANSFER OF APPROPRIATION AUTHORITY - LEGISLATIVE MANAGEMENT REPORT.**

1. Notwithstanding section 9 of this Act, on October 1, 2023, the office of management and budget shall transfer any uncommitted federal coronavirus capital projects fund appropriation authority from the information technology department to the department of career and technical education for the purpose of defraying inflationary costs of existing projects approved under the statewide area career center initiative grant program during the 2021-23 biennium for the biennium beginning July 1, 2023, and ending June 30, 2025. The appropriation authority transferred in this subsection may be spent by the department of career and technical education only if approval is received from the federal government.
2. If any funding in the federal coronavirus capital projects fund is available pursuant to subsection 1 of this section, the office of management and budget shall submit a state plan amendment to the United States Department of the Treasury to request a modification of the planned use of moneys in the federal coronavirus capital projects fund. If the federal government does not approve the state plan amendment to allow the department of career and technical education to use moneys in the federal coronavirus capital projects fund for multipurpose community facility inflationary costs, the office of management and budget shall transfer the uncommitted federal coronavirus capital projects fund appropriation authority to the information technology department for the purpose of providing broadband infrastructure grants pursuant to section 9 of this Act.
3. If the state plan amendment is approved, the department of career and technical education must distribute the funding transferred from the federal coronavirus capital projects fund to existing career academy projects

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<sup>4</sup> Section 54-46-08 was also amended by section 5 of House Bill No. 1528, chapter 470.

proportionally based on funding allocations provided to each project during the 2021-23 biennium. If funding approved in this section is provided for a career academy project and the funding becomes uncommitted during the 2023-25 biennium, the department of career and technical education may redistribute the funding for existing projects under the program during the biennium beginning July 1, 2023, and ending June 30, 2025.

4. The department of career and technical education shall report to the legislative management during the 2023-24 interim and to the appropriations committees of the sixty-ninth legislative assembly regarding the amount of inflationary funding provided for each project and the construction status of each project.
5. The office of management and budget shall report to the legislative management regarding any appropriation authority transferred under this section.

**SECTION 11. EXEMPTION - NORTH DAKOTA STOCKMEN'S ASSOCIATION BRANDING INSPECTION SYSTEM.** The amount of \$401,000 appropriated from federal funds derived from the state fiscal recovery fund for the purpose of providing a grant to the North Dakota stockmen's association for conversion of a paper-based brand inspection program to an electronic system in subsection 23 of section 1 of chapter 550 of the 2021 Special Session Session Laws is not subject to section 54-44.1-11 and is available for the program during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 12. EMERGENCY.** Sections 9 and 10 of this Act are declared to be an emergency measure.

Approved May 5, 2023

Filed May 9, 2023

## CHAPTER 22

### HOUSE BILL NO. 1022

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the commission on legal counsel for indigents.

#### 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, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Commission on legal counsel for indigents	\$20,964,213	\$1,655,907	\$22,620,120
Legal counsel for juveniles	<u>325,000</u>	<u>(325,000)</u>	<u>0</u>
Total all funds	\$21,289,213	\$1,330,907	\$22,620,120
Less estimated income	<u>1,994,850</u>	<u>16,372</u>	<u>2,011,222</u>
Total general fund	\$19,294,363	\$1,314,535	\$20,608,898
Full-time equivalent positions	40.00	1.00	41.00

Approved April 18, 2023

Filed April 19, 2023

# CHAPTER 23

## HOUSE BILL NO. 1023

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the North Dakota racing 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 other income, to the North Dakota racing commission for the purpose of defraying the expenses of the North Dakota racing commission, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Racing commission	\$554,495	\$92,609	\$647,104
Total all funds	\$554,495	\$92,609	\$647,104
Less estimated income	166,601	5,497	172,098
Total general fund	\$387,894	\$87,112	\$475,006
Full-time equivalent positions	2.00	0.00	2.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Internships	\$20,000	\$20,000
Total general fund	\$20,000	\$20,000

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The North Dakota racing commission shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

Approved April 18, 2023

Filed April 19, 2023

## CHAPTER 24

### HOUSE BILL NO. 1024

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of environmental quality; to amend and reenact sections 23.1-10-02 and 23.1-10-05 of the North Dakota Century Code, relating to the environmental quality restoration fund and revenue to the fund; and to provide for an exemption.

#### 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 environmental quality for the purpose of defraying the expenses of the department of environmental quality, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$32,551,817	\$4,553,049	\$37,104,866
Operating expenses	10,771,898	6,475,528	17,247,426
Capital assets	1,247,172	(78,672)	1,168,500
Grants	<u>15,060,118</u>	<u>22,138,000</u>	<u>37,198,118</u>
Total all funds	\$59,631,005	\$33,087,905	\$92,718,910
Less estimated income	46,969,930	29,966,956	76,936,886
Total general fund	\$12,661,075	\$3,120,949	\$15,782,024
Full-time equivalent positions	166.00	7.00	173.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Laboratory information management system	\$1,000,000	\$0
Chemistry laboratory inflation	0	116,800
Loan fund administration	0	177,350
Drinking water program portal	0	325,000
Environmental data systems upgrade	<u>0</u>	<u>1,365,444</u>
Total all funds	\$1,000,000	\$1,984,594
Less estimated income	<u>0</u>	<u>1,796,794</u>
Total general fund	\$1,000,000	\$187,800

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The department of environmental quality shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. APPROPRIATION - FEDERAL FUNDS - LEAD PIPE REMOVAL AND CLEAN WATER PROJECT GRANTS - ONE-TIME FUNDING.** There is appropriated from federal funds, not otherwise appropriated, the sum of \$25,000,000, or so much of the sum as may be necessary, to the department of environmental quality for the purpose of providing grants to political subdivisions with a population of ten thousand or less for lead pipe removal and other projects eligible for funding from the clean water state revolving loan fund for the biennium beginning July 1, 2023, and ending June 30, 2025. The department shall require a political subdivision grant recipient to provide twenty-five percent matching funds and the department may not award grants in excess of \$5,000,000 to a political subdivision. The funding provided in this section is considered a one-time funding item.

**SECTION 4. ESTIMATED INCOME - ENVIRONMENT AND RANGELAND PROTECTION FUND.** The estimated income line item in section 1 of this Act includes the sum of \$250,000 from the environment and rangeland protection fund. This amount includes \$50,000 for a grant to the North Dakota stockmen's association environmental services program.

**SECTION 5. ESTIMATED INCOME - PETROLEUM TANK RELEASE COMPENSATION FUND.** The estimated income line item in section 1 of this Act includes the sum of \$723,595 from the petroleum tank release compensation fund for expenses related to the petroleum tank release program.

**SECTION 6. AMENDMENT.** Section 23.1-10-02 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-10-02. Environmental quality restoration fund - Continuing appropriation.**

There is established an environmental quality restoration fund into which the funds recovered in this chapter may be deposited. The fund is to be administered by the department of environmental quality and may be used by the department for costs of environmental assessment, removal, corrective action, or monitoring as determined on a case-by-case basis. All moneys placed in the fund under this section and section 23.1-10-05 are appropriated to the department on a continuing basis. If, on the first day of July in any year, the amount of uncommitted or unrestricted money in the environmental quality restoration fund is more than five million dollars, the amount in excess of five million dollars must be transferred to the general fund.

**SECTION 7. AMENDMENT.** Section 23.1-10-05 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-10-05. Revenue to the fund.**

Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. ~~If the balance of the fund is less than five million dollars, moneys~~Moneys recovered by the department in an action or administrative proceeding based on violation of the state's environmental statutes, including actions for administrative expense recoveries, civil penalties, compensatory damages; and money paid pursuant to any agreement, stipulation, or settlement. This section does not limit the department's ability to agree to a supplemental environmental project as part of a settlement.
2. Moneys donated to the department for the purposes of this chapter.

3. Transfers from the abandoned oil and gas well plugging and site reclamation fund under subdivision f of subsection 2 of section 38-08-04.5.
4. Moneys received from a federal agency for the purpose of this section.
5. Any other moneys as may be deposited in the fund for use in carrying out the purposes of this chapter.

**SECTION 8. EXEMPTION - LABORATORY INFORMATION MANAGEMENT SYSTEM.** The sum of \$1,000,000, appropriated from the general fund for the laboratory information management system in section 1 of chapter 52 of the 2021 Session Laws, is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available for the laboratory information management system during the biennium beginning July 1, 2023, and ending June 30, 2025.

Approved May 4, 2023

Filed May 5, 2023

## CHAPTER 25

### HOUSE BILL NO. 1025

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of veterans' affairs; and to provide an exemption.

#### 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 veterans' affairs for the purpose of defraying the expenses of the department of veterans' affairs, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Veterans' affairs	\$1,501,950	\$287,506	\$1,789,456
State approving agency	292,024	21,002	313,026
Grants - transportation program	1,220,000	(93,915)	1,126,085
Transport vans	18,800	0	18,800
Service dogs	50,000	(50,000)	0
Veterans' home cemetery	<u>0</u>	<u>291,500</u>	<u>291,500</u>
Total all funds	\$3,082,774	\$456,093	\$3,538,867
Less estimated income	1,512,150	319,297	1,831,447
Total general fund	\$1,570,624	\$136,796	\$1,707,420
Full-time equivalent positions	8.00	1.00	9.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Document scanning project	\$0	\$100,836
Accrued leave	0	19,066
Veterans' home cemetery	291,500	291,500
Fisher house construction assistant grant program	500,000	0
Veterans' medical transportation	<u>147,000</u>	<u>0</u>
Total all funds	\$938,500	\$411,402
Less estimated income	<u>938,500</u>	<u>392,336</u>
Total general fund	\$0	\$19,066

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The department of veterans' affairs shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. ESTIMATED INCOME - FEDERAL STATE FISCAL RECOVERY FUND - DOCUMENT SCANNING PROJECT.** The estimated income line item in section 1 of this Act includes the sum of \$100,836 from federal funds derived from the state fiscal recovery fund for the purpose of a document scanning project.

**SECTION 4. EXEMPTION - POSTTRAUMATIC STRESS DISORDER SERVICE DOG PROGRAM.** The \$50,000 appropriated from the general fund for the posttraumatic stress disorder service dog program in section 1 of chapter 25 of the 2019 Session Laws and the \$50,000 appropriated from the general fund for the posttraumatic stress disorder service dog program in section 1 of chapter 53 of the 2021 Session Laws is not subject to section 54-44.1-11 and any unspent funds from this program are available for the program during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 5. EXEMPTION - FEDERAL STATE FISCAL RECOVERY FUND.** The \$647,000 appropriated from the federal state fiscal recovery fund in subsections 32 and 33 of section 1 of chapter 550 of the 2021 Session Laws, of which \$500,000 was for a grant to assist in the construction of the Fisher house at the Fargo veterans' affairs medical center and \$147,000 was for improving and expanding veterans' medical transportation, is not subject to section 54-44.1-11 and any unspent funds from these programs are available for the programs during the biennium beginning July 1, 2023, and ending June 30, 2025. Of the \$147,000 for veterans' medical transportation, \$18,800 may be used for the purchase of a nonhighly rural transport van during the 2023-25 biennium.

Approved May 8, 2023

Filed May 9, 2023

## CHAPTER 26

### HOUSE BILL NO. 1157

(Representatives Strinden, B. Anderson, Boschee, Brandenburg, Schauer, Swiontek)  
(Senators Hogan, K. Roers, Sorvaag)

AN ACT to provide an appropriation to the department of veterans' affairs for providing grants for the construction of the Fisher house.

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

**SECTION 1. APPROPRIATION - DEPARTMENT OF VETERANS' AFFAIRS - FISHER HOUSE - ONE-TIME FUNDING.** There is appropriated out of any moneys from federal funds derived from the state fiscal recovery fund, not otherwise appropriated, the sum of \$500,000, or so much of the sum as may be necessary, to the department of veterans' affairs for the purpose of providing a grant to assist in the construction of the Fisher house at the Fargo veterans' affairs medical center, for the biennium beginning July 1, 2023, and ending June 30, 2025. This funding is considered a one-time funding item.

Approved April 18, 2023

Filed April 19, 2023

## CHAPTER 27

### HOUSE BILL NO. 1199

(Representative Lefor)  
(Senator Hogue)

AN ACT to provide an appropriation to the department of career and technical education for the statewide area and career center initiative grant program; to authorize a Bank of North Dakota line of credit; to provide an exemption; to provide for a transfer; and to declare an emergency.

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

**SECTION 1. APPROPRIATION - DEPARTMENT OF CAREER AND TECHNICAL EDUCATION - STATEWIDE AREA AND CAREER CENTER INITIATIVE GRANT PROGRAM - ONE-TIME FUNDING.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$2,000,000, or so much of the sum as may be necessary, to the department of career and technical education for the purpose of paying accrued interest on a Bank of North Dakota line of credit used for the statewide area and career center initiative grant program, for the period beginning with the effective date of this Act, and ending June 30, 2025. This funding is considered a one-time funding item.

**SECTION 2. BANK OF NORTH DAKOTA - LINE OF CREDIT - APPROPRIATION - DEPARTMENT OF CAREER AND TECHNICAL EDUCATION - STATEWIDE AREA AND CAREER CENTER INITIATIVE GRANT PROGRAM.** The Bank of North Dakota shall extend a line of credit not to exceed \$68,276,228 to the department of career and technical education at the prevailing interest rate charged to North Dakota governmental entities, the sum of which is appropriated to the department of career and technical education for the purpose of providing grants to entities approved by the state board for career and technical education to build career academies through the statewide area and career center initiative grant program for the period beginning with the effective date of this Act, and ending June 30, 2025. The department may award funding provided in this section to foundations that are working with school districts on career academy projects approved by the state board for career and technical education. The department shall repay the line of credit and accrued interest from funding appropriated from the general fund in section 1 of this Act and from funding appropriated from the federal coronavirus capital projects fund in section 1 of chapter 548 of the 2021 Session Laws. If moneys available on June 30, 2025, are not sufficient to repay the line of credit, the department of career and technical education shall request from the sixty-ninth legislative assembly a deficiency appropriation to repay the line of credit.

**SECTION 3. EXEMPTION - STATEWIDE AREA AND CAREER CENTER INITIATIVE GRANT PROGRAM.** The amount of \$68,276,228 appropriated from the federal coronavirus capital projects fund to the department of career and technical education for the statewide area and career center initiative grant program in section 1 of chapter 548 of the 2021 Session Laws is not subject to section 54-44.1-11 and may be continued and is available to the department of career and technical education for the program during the biennium beginning July 1, 2023, and ending June 30, 2025. The department may award funding provided in this section to

foundations that are working with school districts on career academy projects approved by the state board for career and technical education.

**SECTION 4. TRANSFER - PARTNERSHIP IN ASSISTING COMMUNITY EXPANSION.** The Bank of North Dakota shall transfer the sum of \$20,000,000, or so much of the sum as may be necessary, from the Bank's current earnings and undivided profits to the partnership in assisting community expansion fund during the period beginning with the effective date of this Act and ending June 30, 2023.

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

Approved February 2, 2023

Filed February 2, 2023

## CHAPTER 28

### HOUSE BILL NO. 1225

(Representatives Vetter, Brandenburg, Dyk, Fegley, Klemin, Louser, Steiner, Vigesaa)  
(Senators Bekkedahl, Kreun, Meyer, Myrdal)

AN ACT to provide an appropriation to the information technology department for providing grants to counties for expenses related to an online portal for electronically accessible property information and property tax information.

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

##### SECTION 1. APPROPRIATION - ONLINE TAX PORTAL - ONE-TIME FUNDING.

1. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$300,000, or so much of the sum as may be necessary, to the information technology department for the purpose of providing grants to counties for expenses related to an online portal or promulgating online access for electronically accessible property information and property tax information based on geographic information system data and electronic property information, for the biennium beginning July 1, 2023, and ending June 30, 2025. The information technology department shall develop guidelines for the grants, including an application process. The funding provided in this section is considered a one-time funding item.
2. If a county receives a grant under this section, the online portal or online access to electronically accessible property information and property tax information must:
  - a. Integrate with a computer-assisted mass appraisal system.
  - b. Use a consistent format to display property and property tax information for all properties.
  - c. Include any available pictures or sketches associated with each property.
  - d. Provide access to property tax estimates based on data from a computer-assisted mass appraisal system.
  - e. Have options to keep exempt and confidential information from being publicly accessible.
  - f. Allow users to perform basic and advanced searches of property and property tax information, including search options for comparable sales and by property classification for residential, commercial, and agriculture properties.

Approved April 29, 2023

Filed May 1, 2023

## CHAPTER 29

### HOUSE BILL NO. 1232

(Representatives Nathe, Boschee, Christy, Heinert, Jonas, Warrey)  
(Senators Burckhard, Meyer, Schaible)

AN ACT to provide an appropriation to the department of career and technical education for career exploration software; and to declare an emergency.

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

**SECTION 1. APPROPRIATION - DEPARTMENT OF CAREER AND TECHNICAL EDUCATION - CAREER EXPLORATION SOFTWARE - ONE-TIME FUNDING.** There is appropriated from federal funds derived from the state fiscal recovery fund, not otherwise appropriated, the sum of \$500,000, or so much of the sum as may be necessary, to the department of career and technical education for the purpose of purchasing career exploration virtual reality software capable of integrating with the RUReady career resource network, for the period beginning with the effective date of this Act, and ending June 30, 2025. This funding is considered a one-time funding item.

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

Approved April 12, 2023

Filed April 13, 2023

## CHAPTER 30

### HOUSE BILL NO. 1307

(Representatives Roers Jones, Lefor, Mock, O'Brien, Pyle)  
(Senators Meyer, Patten, J. Roers, K. Roers)

AN ACT to provide an appropriation to the attorney general for a back the blue grant program; and to provide for a report.

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

**SECTION 1. APPROPRIATION - ATTORNEY GENERAL - BACK THE BLUE GRANT PROGRAM - ONE-TIME FUNDING - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$3,500,000, or so much of the sum as may be necessary, to the attorney general for the purpose of providing back the blue grants to assist local law enforcement agencies with workforce recruitment and retention, for the biennium beginning July 1, 2023, and ending June 30, 2025. The attorney general shall provide grants to each city and county law enforcement agency in the state based on the proportional number of licensed peace officers and correctional officers employed by the city or county law enforcement agency compared to the total number of licensed peace officers and correctional officers employed by all city and county law enforcement agencies. Of the funding available under this program, a sum of at least \$750,000 must be granted to local law enforcement agencies employing ten or fewer employees working in a law enforcement capacity. Funding appropriated in this section may be used for providing hiring and retention bonuses to new and current law enforcement and correctional officers and providing tuition and fee payments on behalf of law enforcement trainees. This funding is considered a one-time funding item. Law enforcement agencies receiving funding under this section shall report to the attorney general regarding the use and effectiveness of the funding. The attorney general shall report to the sixty-ninth legislative assembly regarding the use and effectiveness of grant funds and the number of grants provided pursuant to this section.

Approved April 18, 2023

Filed April 18, 2023

## CHAPTER 31

### HOUSE BILL NO. 1415

(Representatives Kiefert, K. Anderson, Heinert, Ostlie, Rohr, Satrom)  
(Senators Conley, Wanzek)

AN ACT to provide an appropriation to the attorney general for a law enforcement staffing grant program; and to provide for a legislative management study.

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

**SECTION 1. APPROPRIATION - LAW ENFORCEMENT STAFFING GRANT PROGRAM - ONE-TIME FUNDING.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$29,000, or so much of the sum as may be necessary, to the attorney general for the purpose of awarding grants to any local police department located in a community that has recently experienced a significant increase in the number of registered sex offenders living in that community in order to hire additional law enforcement staff, for the biennium beginning July 1, 2023, and ending June 30, 2025. Eligible expenditures under the program include costs related to salaries and overtime, training, and purchases of equipment for existing and newly hired law enforcement staff. The attorney general shall establish guidelines to provide grants under the program. This funding is considered a one-time funding item.

**SECTION 2. LEGISLATIVE MANAGEMENT STUDY - SEXUAL PREDATOR TASK FORCE.** During the 2023-24 interim, the legislative management shall consider studying the feasibility and desirability of creating a multijurisdictional sexual predator task force. The study must include input from stakeholders, including representatives from law enforcement, regarding the need for or desire to have a sexual predator task force. The study also must include an analysis of interagency coordination. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

Approved May 4, 2023

Filed May 5, 2023

## CHAPTER 32

### HOUSE BILL NO. 1519

(Representatives Hagert, Nathe, O'Brien, Porter, Stemen)  
(Senators Bekkedahl, Meyer, Weber)

AN ACT to provide appropriations to the department of career and technical education and agriculture commissioner for uncrewed aircraft system, autonomous vehicle, or other autonomous technology grants; to provide for a legislative management study; and to provide a report.

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

#### **SECTION 1. APPROPRIATION - FEDERAL STATE FISCAL RECOVERY FUND - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - DEPARTMENT OF CAREER AND TECHNICAL EDUCATION - ONE-TIME FUNDING - REPORT TO LEGISLATIVE MANAGEMENT.**

1. There is appropriated from federal funds derived from the state fiscal recovery fund, not otherwise appropriated, the sum of \$475,000, or so much of the sum as may be necessary, to the department of career and technical education for the purpose of uncrewed aircraft system, autonomous vehicle, or other autonomous technology grants to a workforce training center serving the northwest area of the state, for the biennium beginning July 1, 2023, and ending June 30, 2025. The funding provided in this subsection is considered a one-time funding item.
2. There is appropriated from the strategic investment and improvements fund, not otherwise appropriated, the sum of \$12,500, or so much of the sum as may be necessary, to the department of career and technical education for the purpose of administering the grant program in subsection 1 of section 1 of this Act, for the biennium beginning July 1, 2023, and ending June 30, 2025. The funding provided in this subsection is considered a one-time funding item.
3. The department of career and technical education shall develop an application process and guidelines for the grants, including eligibility criteria, maximum grant awards, and matching requirements. The department of career and technical education may require a workforce training center to provide one dollar of matching funds for every four dollars awarded by the state. To be eligible for a grant, a workforce training center shall certify to the department of career and technical education that the operation of the uncrewed aircraft system, autonomous vehicle, or other autonomous technology is related to workforce or educational training with uncrewed aircraft systems, autonomous vehicles, or other autonomous technologies.
4. A workforce training center may use grant funding to contract for services related to uncrewed aircraft systems, autonomous vehicles, or other autonomous technologies; for educational or training curriculum expenses related to uncrewed aircraft systems, autonomous vehicles, or other autonomous technologies; or for other eligible uses related to uncrewed aircraft system, autonomous vehicle, or other autonomous technology

operations as determined by the department of career and technical education.

5. During the 2023-24 interim, the department of career and technical education shall provide at least one report to the legislative management regarding the grants, including a list of grant recipients, the amounts awarded, and a description of the use of the grant funding.

**SECTION 2. APPROPRIATION - FEDERAL STATE FISCAL RECOVERY FUND - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - AGRICULTURE COMMISSIONER - ONE-TIME FUNDING - REPORT TO LEGISLATIVE MANAGEMENT.**

1. There is appropriated from federal funds derived from the state fiscal recovery fund, not otherwise appropriated, the sum of \$275,000, or so much of the sum as may be necessary, to the agriculture commissioner for the purpose of uncrewed aircraft system, autonomous vehicle, or other autonomous technology grants to individuals and entities in the agriculture industry, for the biennium beginning July 1, 2023, and ending June 30, 2025. The funding provided in this subsection is considered a one-time funding item.
2. There is appropriated from the strategic investment and improvements fund, not otherwise appropriated, the sum of \$12,500, or so much of the sum as may be necessary, to the agriculture commissioner for the purpose of administering the grant program in subsection 1 of section 2 of this Act, for the biennium beginning July 1, 2023, and ending June 30, 2025. The funding provided in this subsection is considered a one-time funding item.
3. The agriculture commissioner shall develop an application process and guidelines for the grants, including eligibility criteria, maximum grant awards, and matching requirements. The agriculture commissioner may require an individual or entity to provide one dollar of matching funds for every four dollars awarded by the state. To be eligible for a grant, an individual or entity shall certify to the agriculture commissioner that the operation of the uncrewed aircraft system, autonomous vehicle, or other autonomous technology is related to inspecting, operating, maintaining, or construction of agriculture property or infrastructure.
4. An individual or entity may use grant funding to contract for services related to uncrewed aircraft systems, autonomous vehicles, or other autonomous technologies; or for other eligible uses related to uncrewed aircraft system, autonomous vehicle, or other autonomous technology operations as determined by the agriculture commissioner.
5. During the 2023-24 interim, the agriculture commissioner shall provide at least one report to the legislative management regarding the grants, including a list of grant recipients, the amounts awarded, and a description of the use of the grant funding.

**SECTION 3. LEGISLATIVE MANAGEMENT STUDY - UNCREWED AUTONOMOUS SYSTEMS.** During the 2023-24 interim, the legislative management shall consider studying the utilization of existing autonomous system capabilities and infrastructure to provide solutions to workforce and safety needs in the state. The study must include an analysis of utilizing autonomous technology for infrastructure inspection, rural emergency service needs, agriculture advancement, energy industry application, and other opportunities for collaboration through the utilization of

autonomous system technology. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

Approved May 4, 2023

Filed May 5, 2023

## CHAPTER 33

### SENATE BILL NO. 2001

(Appropriations Committee)

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 salaries of the governor and lieutenant governor; to provide for a report; and to provide an exemption.

**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 office of the governor for the purpose of defraying the expenses of the office of the governor, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$3,861,034	\$427,289	\$4,288,323
Operating expenses	421,635	217,696	639,331
Contingencies	10,000	0	10,000
Rough rider awards	10,800	0	10,800
Governor's salary	284,475	26,146	310,621
Transition in	0	15,000	15,000
Transition out	0	50,000	50,000
Total general fund	\$4,587,944	\$736,131	\$5,324,075
Full-time equivalent positions	17.00	2.00	19.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Constituent software	\$0	\$130,000
Governor transition costs	0	65,000
Total general fund	\$0	\$195,000

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The governor shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. ADDITIONAL INCOME - APPROPRIATION - GOVERNOR'S OFFICE - BUDGET SECTION REPORT.** Subject to the limitations of this section, in addition to the amounts appropriated in section 1 of this Act, there is appropriated to the governor's office, any additional income from other funds, excluding federal funds, which may become available to the governor's office, for the period beginning July 1, 2023, and ending June 30, 2025. Any other funds received under this section must be

used for the specific purpose intended for the funds or transferred to the appropriate state agency or institution. Upon the receipt of other funds under this section, the governor's office shall provide a report to the budget section regarding the source, amount, and purpose of the funds received. Federal funds which may become available to the governor's office may be accepted by the governor's office. Federal funds accepted by the governor's office may not be spent until authorization is received from the legislative assembly or from the emergency commission and budget section under chapter 54-16.

**SECTION 4. GOVERNOR'S SALARY - EXEMPTION.** The governor's salary line item in section 1 of this Act includes the sum of \$310,621 for the salary of the governor for the biennium beginning July 1, 2023, and ending June 30, 2025. If the governor chooses not to accept the salary or any portion of the salary pursuant to section 54-07-04, section 54-07-04 does not apply to the portion of the salary not accepted. Notwithstanding section 54-16-04, the office of management and budget may transfer appropriation authority from the governor's salary line item to other line items in section 1 of this Act.

**SECTION 5. 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 one hundred ~~forty thousand eight hundred twenty-nine~~forty-two thousand two hundred sixty-five dollars through June 30, ~~2022~~2024, and one hundred ~~forty-three thousand six hundred forty-six~~forty-eight thousand three hundred fifty-six dollars thereafter.

**SECTION 6. 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 one hundred ~~nine thousand five hundred thirty-six~~thirty thousand dollars through June 30, ~~2022~~2024, and one hundred ~~eleven thousand seven hundred twenty-seven~~thirty-five thousand two hundred dollars thereafter.

Approved April 20, 2023

Filed April 21, 2023

## CHAPTER 34

### SENATE BILL NO. 2002

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the office of the secretary of state and public printing; and to amend and reenact section 54-09-05 of the North Dakota Century Code, relating 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, 2023, and ending June 30, 2025, as follows:

Subdivision 1.

**SECRETARY OF STATE**

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$5,528,082	\$726,643	\$6,254,725
Operating expenses	3,308,424	4,175,907	7,484,331
Grants	25,000	0	25,000
Petition review	8,000	0	8,000
Election reform	<u>4,699,689</u>	<u>6,131,119</u>	<u>10,830,808</u>
Total all funds	\$13,569,195	\$11,033,669	\$24,602,864
Less estimated income	<u>8,305,574</u>	<u>9,526,501</u>	<u>17,832,075</u>
Total general fund	\$5,263,621	\$1,507,168	\$6,770,789
Full-time equivalent positions	33.00	2.00	35.00

Subdivision 2.

**SECRETARY OF STATE - PUBLIC PRINTING**

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Public printing	<u>\$257,931</u>	<u>\$13,404</u>	<u>\$271,335</u>
Total general fund	\$257,931	\$13,404	\$271,335

Subdivision 3.

**TOTAL - SECTION 1**

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$5,521,552	\$1,520,572	\$7,042,124
Grand total special funds	<u>8,305,574</u>	<u>9,526,501</u>	<u>17,832,075</u>
Grand total all funds	\$13,827,126	\$11,047,073	\$24,874,199

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh Legislative Assembly for the 2021-23 biennium and the one-time items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
New campaign system and contracted website redesign	\$0	\$1,000,000
Election management system	0	5,000,000
FirstStop 0	1,000,000	
Information technology system enhancements	0	500,000
Help America Vote Act	0	1,000,000
Total other funds	\$0	\$8,500,000

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The secretary of state shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. ESTIMATED INCOME - FEDERAL STATE FISCAL RECOVERY FUND.** The estimated income line item in subdivision 1 of section 1 of this Act includes the sum of \$6,000,000 from the federal state fiscal recovery fund for an election management system and to upgrade FirstStop.

**SECTION 4. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND.** The estimated income line item in subdivision 1 of section 1 of this Act includes the sum of \$1,500,000 from the strategic investment and improvements fund for a new campaign system, contracted website redesign, and information technology system enhancements for the secretary of state.

**SECTION 5. 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 ~~one hundred twelve thousand two hundred forty-one~~one hundred thirty thousand dollars through June 30, ~~2022~~2024, and ~~one hundred fourteen thousand four hundred eighty-six~~one hundred thirty-five thousand two hundred dollars thereafter.

Approved April 20, 2023

Filed April 21, 2023

## CHAPTER 35

### SENATE BILL NO. 2003

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the attorney general; to amend and reenact sections 53-12.1-09 and 54-12-11 of the North Dakota Century Code, relating to transfers from the lottery operating fund to the multijurisdictional drug task force grant fund and the salary of the attorney general; to provide a transfer; to provide an exemption; to provide for a legislative management 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 attorney general for the purpose of defraying the expenses of the attorney general, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$50,832,646	(\$537,204)	\$50,295,442
Operating expenses	15,237,498	3,503,607	18,741,105
Capital assets	648,055	4,585,572	5,233,627
Grants	3,903,440	400,000	4,303,440
Human trafficking victims grants	1,101,879	3,525	1,105,404
Forensic nurse examiners grants	250,691	791	251,482
Statewide litigation funding pool	0	5,000,000	5,000,000
Litigation fees	127,500	0	127,500
Medical examinations	660,000	0	660,000
Children's forensic interviews	0	304,560	304,560
North Dakota lottery	5,254,844	61,790	5,316,634
Arrest and return of fugitives	8,500	0	8,500
Gaming commission	7,489	0	7,489
Criminal justice information sharing	4,074,968	412,169	4,487,137
Law enforcement	<u>3,048,927</u>	<u>82,770</u>	<u>3,131,697</u>
Total all funds	\$85,156,437	\$13,817,580	\$98,974,017
Less estimated income	<u>42,509,719</u>	<u>4,836,388</u>	<u>47,346,107</u>
Total general fund	\$42,646,718	\$8,981,192	\$51,627,910
Full-time equivalent positions	253.00	13.00	266.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Criminal history improvement system	\$400,000	\$0
Automated biometric identification system	300,000	0

Charitable gaming technology system	475,000	0
Additional income	250,000	0
Missing persons database	300,000	0
Prosecuting case management system	1,000,000	0
Charitable gaming tax information technology costs	50,000	0
Capital assets	1,111,706	2,818,877
State crime laboratory capital improvements	0	250,000
Statewide litigation funding pool	4,650,000	5,000,000
Staff operating and equipment costs	0	792,090
Inflationary increases	0	156,463
Anti-methamphetamine program	0	1,772,038
Law enforcement resiliency grants	0	400,000
Total all funds	\$8,536,706	\$11,189,468
Total other funds	<u>8,536,706</u>	<u>6,582,122</u>
Total general fund	\$0	\$4,607,346

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The attorney general shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. ADDITIONAL INCOME - APPROPRIATION - REPORT.** In addition to the amounts appropriated to the attorney general in section 1 of this Act, there is appropriated from federal or other funds, the sum of \$250,000, or so much of the sum as may be necessary, to the attorney general for the purposes of defraying the expenses of the office, for the biennium beginning July 1, 2023, and ending June 30, 2025. The attorney general shall notify the office of management and budget and the legislative council of any funding made available pursuant to this section.

**SECTION 4. TRANSFER - LOTTERY OPERATING FUND TO GAMING AND EXCISE TAX ALLOCATION FUND - STATEWIDE LITIGATION FUNDING POOL.** Notwithstanding sections 53-12.1-09 and 53-12.1-10, the attorney general shall transfer \$2,760,000 from the lottery operating fund to the gaming and excise tax allocation fund by June 30, 2023, for the purpose of defraying litigation expenses of the state through the statewide litigation funding pool during the period beginning with the effective date of this Act, and ending June 30, 2025.

**SECTION 5. TRANSFER - STATEWIDE LITIGATION FUNDING POOL TO STATE AGENCIES - ESTIMATED INCOME - GAMING AND EXCISE TAX ALLOCATION FUND.** The statewide litigation funding pool line item in section 1 of this Act includes \$5,000,000, of which \$1,797,748 is from the general fund and \$3,202,252 is from the gaming and excise tax allocation fund, which the attorney general shall transfer to eligible state agencies for litigation expenses during the biennium beginning July 1, 2023, and ending June 30, 2025. The attorney general may not use funding from the statewide litigation funding pool to pay judgments under section 32-12-04.

**SECTION 6. ESTIMATED INCOME - CHARITABLE GAMING TECHNOLOGY SYSTEM - CHARITABLE GAMING OPERATING FUND.** The estimated income line item in section 1 of this Act includes \$736,000 from the charitable gaming operating fund for defraying expenses related to the continued development and implementation of the charitable gaming technology system.

**SECTION 7. HUMAN TRAFFICKING VICTIMS GRANT PROGRAM - REQUIREMENTS - REPORTS.** The human trafficking victims grants line item in section 1 of this Act includes \$1,105,404 from the general fund for the purpose of

providing grants to organizations involved in providing prevention and treatment services related to human trafficking victims and related administrative costs for the biennium beginning July 1, 2023, and ending June 30, 2025. The attorney general may provide grants for the development and implementation of direct care emergency or long-term crisis services, residential care, training for law enforcement, support of advocacy services, and programs promoting positive outcomes for victims. Any organization that receives a grant under this section shall report to the attorney general and the appropriations committees of the sixty-ninth legislative assembly on the use of the funds received and the outcomes of its program. The attorney general shall report to the legislative management during the 2023-24 interim on the status and results of the grant program.

#### **SECTION 8. FORENSIC NURSE EXAMINERS GRANT PROGRAM - REPORTS.**

The forensic nurse examiners grants line item in section 1 of this Act includes \$251,482 from the general fund for the purpose of providing forensic nurse examiner program grants for community-based or hospital-based sexual assault examiner programs and related administrative costs, for the biennium beginning July 1, 2023, and ending June 30, 2025. Any organization that receives a grant under this section shall report to the attorney general and the appropriations committees of the sixty-ninth legislative assembly on the use of the funds received and the outcomes of its programs. The attorney general shall report to the appropriations committees of the sixty-ninth legislative assembly on the number of nurses trained, the number and location of nurses providing services related to sexual assault nurse examiner programs, and documentation of collaborative efforts to assist victims which includes nurses, the hospital or clinic, law enforcement, and state's attorneys.

**SECTION 9. LAW ENFORCEMENT RESILIENCY GRANT PROGRAM - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The grants line item in section 1 of this Act includes \$400,000 from the general fund for the purpose of providing law enforcement resiliency program grants, for the biennium beginning July 1, 2023, and ending June 30, 2025. Funding provided under this Act must be used to defray administrative, therapeutic, training, and outreach-related costs of providing mental health and wellness support services to current and retired correctional and law enforcement personnel. The attorney general shall establish guidelines to award funding under this section. Any organization that receives a grant under this section shall report to the attorney general and the attorney general shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of the funds received and the outcomes of its programs.

**SECTION 10. AMENDMENT.** Section 53-12.1-09 of the North Dakota Century Code is amended and reenacted as follows:

#### **53-12.1-09. Operating fund - Continuing appropriation - Authorization of disbursements - Report - Net proceeds.**

There is established within the state treasury the lottery operating fund into which must be deposited all revenue from the sale of tickets, interest received on money in the fund, and all other fees and moneys collected, less a prize on a lottery promotion, prize on a winning ticket paid by a retailer, and a retailer's commission. Except for moneys in the lottery operating fund appropriated by the legislative assembly for administrative and operating costs of the lottery under section 53-12.1-10, all other money in the fund is continuously appropriated for the purposes specified in this section. During each regular session, the attorney general shall present a report to the appropriations committee of each house of the legislative assembly on the actual and estimated operating revenue and expenditures for the current biennium and projected operating revenue and expenditures for the subsequent biennium

authorized by this section. A payment of a prize or expense or transfer of net proceeds by the lottery may be made only against the fund or money collected from a retailer on the sale of a ticket. A disbursement from the fund must be for the following purposes:

1. Payment of a prize as the director deems appropriate to the owner of a valid, winning ticket;
2. Notwithstanding section 53-12.1-10, payment of a marketing expense that is directly offset by cosponsorship funds collected;
3. Payment of a gaming system or related service expense, retailer record and credit check fees, game group dues, and retailer commissions; and
4. Transfer of net proceeds:
  - a. Eighty thousand dollars must be transferred to the state treasurer each quarter for deposit in the gambling disorder prevention and treatment fund;
  - b. An amount for the lottery's share of a game's prize reserve pool must be transferred to the multistate lottery association;
  - c. Starting July 1, ~~2019~~2023, two hundred ~~fifty~~ thousand dollars must be transferred to the state treasurer each quarter for deposit in the attorney general multijurisdictional drug task force grant fund; and
  - d. The balance of the net proceeds, less holdback of any reserve funds the director may need for continuing operations, must be transferred to the state treasurer on at least an annual basis for deposit in the state general fund.

**SECTION 11. 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 one hundred ~~sixty-five~~seventy-nine thousand ~~eight~~three hundred ~~forty-five~~twelve dollars through June 30, ~~2022~~2024, and one hundred ~~sixty-nine~~eighty-six thousand ~~one~~four hundred ~~sixty-two~~eighty-four dollars thereafter.

**SECTION 12. CRIMINAL HISTORY RECORD CHECKS - FEES.** Any individual or entity requesting a criminal history record check from the bureau of criminal investigation, as a result of legislation enacted by the sixty-eighth legislative assembly, shall pay a reasonable fee established by the attorney general to the attorney general to be deposited in the general fund for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 13. EXEMPTION - CONTINGENT FEE ARRANGEMENT.** Notwithstanding section 54-12-08.1, the attorney general may contract for legal services compensated by a contingent fee arrangement for ongoing multistate technology litigation during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 14. EXEMPTION - GAMING TAX REVENUE GRANTS.** Notwithstanding section 53-06.1-12, the attorney general may distribute gaming tax

revenue grants to cities and counties relating to the seventh and eighth quarters of the 2021-23 biennium through October 31, 2023.

**SECTION 15. EXEMPTION - ATTORNEY GENERAL REFUND FUND.** Notwithstanding section 54-12-18, the attorney general may retain the balance in the attorney general refund fund which would otherwise be transferred to the general fund on June 30, 2023.

**SECTION 16. EXEMPTION - CONCEALED WEAPON REWRITE PROJECT.** The amount appropriated to the attorney general from the general fund for a concealed weapon rewrite project as contained in section 1 of chapter 37 of the 2015 Session Laws and continued into the 2017-19, 2019-21, and 2021-23 bienniums, is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available to the attorney general for the concealed weapon rewrite project, during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 17. EXEMPTION - LEGAL CASE MANAGEMENT SYSTEM.** The amount appropriated to the attorney general from other funds for the statewide automated victim information and notification system as contained in sections 1 and 8 of chapter 3 of the 2017 Session Laws, continued into the 2019-21 biennium for the statewide automated victim information and notification system, and continued into the 2021-23 biennium for the legal case management system, is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available to the attorney general for the legal case management system during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 18. EXEMPTION - CRIMINAL HISTORY IMPROVEMENT PROJECT.** The amount of \$400,000 appropriated from the attorney general refund fund in the operating expenses line item for the criminal history improvement project in section 1 of chapter 3 of the 2021 Session Laws is not subject to section 54-44.1-11 and is available for the project during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 19. EXEMPTION - AUTOMATED BIOMETRIC IDENTIFICATION SYSTEM.** The amount of \$300,000 appropriated from federal funds to upgrade the automated biometric identification system during the 2021-23 biennium in section 1 of chapter 3 of the 2021 Session Laws is not subject to section 54-44.1-11 and is available for the system during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 20. EXEMPTION - COVID-19 FUNDS - JUSTICE ASSISTANCE GRANTS.** The amount of \$2,082,871 appropriated from federal funds derived from COVID-19 funds for justice assistance grants during the 2019-21 biennium in section 1 of chapter 27 and continued into the 2021-23 biennium in section 2 of chapter 27 of the 2021 Session Laws is not subject to section 54-44.1-11 and is available for the program during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 21. EXEMPTION - FEDERAL STATE FISCAL RECOVERY FUND.** The amount of \$1,000,000 appropriated from federal funds derived from the state fiscal recovery fund for the replacement of the prosecuting case management system in subsection 20 of section 1 of chapter 550 of the 2021 Special Session Session Laws is not subject to section 54-44.1-11 and is available for the program during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 22. LEGISLATIVE MANAGEMENT STUDY - STATE CRIME LABORATORY.** During the 2023-24 interim, the legislative management shall study

the services and needs of the North Dakota state crime laboratory, including staffing and equipment needs; the need for forensic scientists with training in firearms and fingerprint analysis; the feasibility and desirability of remodeling current state crime laboratory facilities, acquiring other vacant laboratory facilities in the state, and operating additional state crime laboratory facilities in the state; services the state crime laboratory should have the capability of providing to support law enforcement entities in the state; and whether the state crime laboratory should be administratively separate from the bureau of criminal investigation. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 23. ATTORNEY COST-SAVINGS - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The attorney general shall report to the appropriations committees of the sixty-ninth legislative assembly regarding any cost-savings realized by hiring full-time equivalent attorney positions instead of contracting for third-party legal counsel during the 2023-25 biennium.

**SECTION 24. EMERGENCY.** The \$250,000 appropriated from the general fund in the capital assets line item in section 1 for state crime laboratory capital improvements and sections 4 and 14 of this Act are declared to be an emergency measure.

Approved May 8, 2023

Filed May 9, 2023

**CHAPTER 36**

**SENATE BILL NO. 2004**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the state auditor; to create and enact section 54-10-31 of the North Dakota Century Code, relating to audits of the department of financial institutions; to amend and reenact sections 54-10-01 and 54-10-10 of the North Dakota Century Code, relating to the powers and duties of the state auditor and the salary of the state auditor; to provide for a legislative management study; to provide for a legislative management report; 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 auditor for the purpose of defraying the expenses of the state auditor, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$13,123,559	\$945,944	\$14,069,503
Operating expenses	1,371,703	416,068	1,787,771
Capital assets	0	70,550	70,550
Information technology consultants	<u>450,000</u>	<u>0</u>	<u>450,000</u>
Total all funds	\$14,945,262	\$1,432,562	\$16,377,824
Less estimated income	<u>5,826,152</u>	<u>518,000</u>	<u>6,344,152</u>
Total general fund	\$9,119,110	\$914,562	\$10,033,672
Full-time equivalent positions	61.00	4.00	65.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Local government audit office furniture	\$0	\$9,000
Inflationary increases for travel and professional development	0	59,000
Audit software setup and migration	0	45,550
Capital equipment replacement	<u>0</u>	<u>25,000</u>
Total all funds	\$0	\$138,550
Less estimated income	<u>0</u>	<u>37,000</u>
Total general fund	\$0	\$101,550

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The state auditor shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. APPROPRIATION - 2021-23 BIENNIUM - REFUND OF AUDIT FEES.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$11,000, or so much of the sum as may be necessary, to the state auditor for the purpose of refunding audit fees to a certain political subdivision, for the period beginning with the effective date of this section, and ending June 30, 2023. To be eligible for a refund, the political subdivision must have been required to submit an audit report to the state auditor because the entity's revenue exceeded the audit threshold for a single year, pursuant to section 54-10-14 prior to the enactment of Senate Bill No. 2180, as approved by the sixty-eighth legislative assembly, due to one-time funding and contracted with the state auditor for an audit.

<sup>5</sup> **SECTION 4. AMENDMENT.** Section 54-10-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-10-01. Powers and duties of state auditor - Report.**

1. The state auditor shall:

- a. Be vested with the duties, powers, and responsibilities involved in performing the postaudit of all financial transactions of state government, detecting and reporting any defaults, and determining that expenditures have been made in accordance with law and appropriation acts.
- b. Perform or provide for the audit of the general purpose financial statements and a review of the material included in the comprehensive annual financial report of the state in accordance with government auditing standards.
- c. ~~Perform~~Except for the audit of the department of financial institutions as outlined in section 54-10-31, perform or provide for audits of state agencies in accordance with government auditing standards and legislative audit and fiscal review committee guidelines developed under section 54-35-02.10. Except for the annual audit of the North Dakota lottery required by section 53-12.1-03, the state auditor shall audit each state agency once every two years. Audits may be conducted at more frequent intervals if requested by the governor or the legislative audit and fiscal review committee. The state auditor shall charge an amount equal to the cost of the audit and other services rendered by the state auditor to all agencies that receive and expend moneys from other than the general fund. This charge may be reduced for an agency that receives and expends both general fund and nongeneral fund moneys. State agencies shall use nongeneral fund moneys to pay for the cost of the audit. If nongeneral fund moneys are not available, the agency may, upon approval of the legislative assembly, or the budget section if the legislative assembly is not in session, use general fund moneys to pay for the audit. Any budget section action under this subdivision must comply with section 54-35-02.9.
- d. ~~Perform~~Except for the audit of the department of financial institutions as outlined in section 54-10-31, perform or provide for performance audits of state agencies, or the agencies' blended component units or discreetly

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<sup>5</sup> Section 54-10-01 was also amended by section 1 of House Bill No. 1508, chapter 467, section 1 of Senate Bill No. 2180, chapter 468, and section 2 of Senate Bill No. 2259, chapter 469.

presented component units, as determined necessary by the legislative assembly, or the legislative audit and fiscal review committee if the legislative assembly is not in session. When determining the necessity of a performance audit, the legislative audit and fiscal review committee shall consider:

- (1) The potential cost-savings or efficiencies that may be gained as a result of the performance audit;
  - (2) The staff resources of the state auditor's office and of the state agency being audited which will be required to conduct the audit;
  - (3) The potential for discovery of noncompliance with state law or legislative intent regarding the program or agency; and
  - (4) The potential for the performance audit to identify opportunities for program improvements.
- e. Report on the functions of the state auditor's office to the governor and the secretary of state in accordance with section 54-06-04 or more often as circumstances may require.
- f. Perform work on mineral royalties for the federal government in accordance with section 1735(a) of the Mineral Lands and Mining Act [30 U.S.C. 1735 et seq.].
- g. Report to the legislative audit and fiscal review committee regarding final report distribution policies and practices and any final audit reports released to the public prior to distribution of the final audit report to all individuals charged with the governance of the audit client.
- h. Perform all other duties as prescribed by law.
2. The state auditor may:
- a. Conduct any work required by the federal government.
  - b. Within the resources available to the state auditor, perform or provide for performance audits of state agencies as determined necessary by the state auditor.
  - c. Audit the International Peace Garden at the request of the board of directors of the International Peace Garden.
  - d. Contract with a private certified public accountant or other qualified professional to conduct or assist with an audit, review, or other work the state auditor is authorized to perform or provide for under this section. Before entering any contract, the state auditor shall present information to the legislative audit and fiscal review committee on the need for the contract and its estimated cost and duration. Except for performance audits conducted under subdivision d of subsection 1 or subdivision b of this subsection and except for audits of occupational or professional boards, the state auditor shall execute the contract and any executive branch agency, including higher education institutions, shall pay the fees of the contractor. For performance audits conducted under subdivision d of

subsection 1 or subdivision b of this subsection, the state auditor may charge a state agency for the cost of a contract relating to an audit, subject to approval by the legislative assembly or the legislative audit and fiscal review committee if the legislative assembly is not in session. When considering a request, the legislative audit and fiscal review committee shall consider the effect of the audit cost on the agency being audited, the necessity of the contract, and the potential benefit to the state resulting from the contract. The state auditor shall notify the affected agency of the potential cost before requesting approval from the legislative assembly or the legislative audit and fiscal review committee.

3. Notwithstanding subdivision c of subsection 1 and subdivision d of subsection 2, the state auditor may not charge audit fees to an institution of higher education, agency, or office under the control of the state board of higher education, including passthrough grants, except for a proportional share of audit fees on federal programs or grants to the extent those audited federal programs or grants provide for allowable cost recovery. Institutions without an approved indirect cost recovery fund may not be assessed audit fees on closed federal programs.

**SECTION 5. 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 one hundred ~~twelve thousand two hundred forty-one~~thirty thousand dollars through June 30, ~~2022~~2024, and one hundred ~~fourteen thousand four hundred eighty-six~~thirty-five thousand two hundred dollars thereafter.

**SECTION 6.** Section 54-10-31 of the North Dakota Century Code is created and enacted as follows:

**54-10-31. Department of financial institutions - Audit and reports.**

Once every two years, the state banking board shall provide for an audit of the department of financial institutions by a certified public accountant. The state banking board may request the state auditor to conduct the audit. If the state auditor agrees to conduct the audit, the state auditor shall deposit any fees assessed for completion of the audit to the state auditor operating account.

**SECTION 7. LEGISLATIVE MANAGEMENT STUDY - LOCAL GOVERNMENT AUDIT SERVICES.** During the 2023-24 interim, the legislative management shall consider studying local government audit services and the challenges of political subdivisions to obtain auditing services. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 8. EMERGENCY.** Section 3 of this Act is declared to be an emergency measure.

Approved May 8, 2023

Filed May 9, 2023

## CHAPTER 37

### SENATE BILL NO. 2005

(Appropriations Committee)

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

**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 treasurer for the purpose of defraying the expenses of the state treasurer, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	Base Level	Adjustments or Enhancements	Appropriation
Salaries and wages	\$1,430,495	\$145,203	\$1,575,698
Operating expenses	157,423	135,748	293,171
Coal severance payments	118,000	0	118,000
Total general fund	\$1,705,918	\$280,951	\$1,986,869
Full-time equivalent positions	7.00	0.00	7.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 biennium one-time funding items included in the appropriation in section 1 of this Act:

One-Time Funding Description	2021-23	2023-25
Township allocations	\$20,000,000	\$0
Distributions to political subdivisions	50,160,000	0
Supplemental distributions to political subdivisions	3,014,975	0
Information technology costs	0	27,825
Total all funds	\$73,174,975	\$27,825
Less estimated income	73,174,975	0
Total general fund	\$0	\$27,825

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The state treasurer shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**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 one hundred ~~twelve~~<sup>thirty</sup> thousand ~~two~~<sup>one</sup> hundred ~~forty~~<sup>one</sup> dollars through June 30, ~~2022~~<sup>2024</sup>, and one hundred ~~fourteen~~<sup>thirty-five</sup> thousand ~~four~~<sup>two</sup> hundred ~~eighty~~<sup>six</sup> dollars thereafter.

Approved April 20, 2023

Filed April 21, 2023

## CHAPTER 38

### SENATE BILL NO. 2006

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the office of the tax commissioner and for payment of state reimbursement under the homestead tax credit and disabled veterans' tax credit; to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to a sales tax exemption for materials used to construct, expand, or upgrade a facility that refines renewable feedstock into sustainable aviation fuel; to amend and reenact section 57-01-04, subsection 2 of section 57-02-53, and subsection 3 of section 57-40.2-03.3 of the North Dakota Century Code, relating to the salary of the state tax commissioner, property assessment increase notices, and use tax exemptions; to provide an exemption; to provide for a transfer; 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 in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the tax commissioner for the purpose of defraying the expenses of the tax commissioner and paying the state reimbursement under the homestead tax credit and disabled veterans' tax credit, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$22,594,196	\$730,838	\$23,325,034
Operating expenses	7,466,120	1,647,250	9,113,370
Capital assets	6,000	0	6,000
Homestead tax credit	18,000,000	900,000	18,900,000
Disabled veterans' tax credit	<u>16,300,000</u>	<u>2,445,000</u>	<u>18,745,000</u>
Total all funds	\$64,366,316	\$5,723,088	\$70,089,404
Less estimated income	<u>125,000</u>	0	<u>125,000</u>
Total general fund	\$64,241,316	\$5,723,088	\$69,964,404
Full-time equivalent positions	118.00	(1.00)	117.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Information technology enhancements	\$0	\$500,000
Total general fund	\$0	\$500,000

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The state tax commissioner shall report to the

appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. EXEMPTION - LINE ITEM TRANSFERS.** Notwithstanding section 54-16-04, the state tax commissioner may transfer funds between the homestead tax credit and disabled veterans' tax credit line items in section 1 of this Act if one line item does not have sufficient funds available for state reimbursement of eligible tax credits. The state tax commissioner shall notify the office of management and budget and the legislative council of any transfers made pursuant to this section.

**SECTION 4. MOTOR VEHICLE FUEL TAX REVENUE TRANSFER.** There is transferred to the general fund in the state treasury out of motor vehicle tax revenue collected pursuant to section 57-43.1-02, the sum of \$1,844,424, 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, for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 5. 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 one hundred ~~twenty-one~~thirty-one thousand ~~eight~~seven hundred ~~fourteen~~five dollars through June 30, ~~2022~~2024, and one hundred ~~twenty-four~~thirty-six thousand ~~two~~nine hundred ~~fifty~~seventy-three dollars thereafter.

**SECTION 6. AMENDMENT.** Subsection 2 of section 57-02-53 of the North Dakota Century Code is amended and reenacted as follows:

2. The form of notice prescribed by the tax commissioner must require a statement to inform the taxpayer that an assessment increase ~~does not~~may mean property taxes on the parcel will increase. The notice may ~~not~~ contain an estimate of a tax increase resulting from the assessment increase.

**SECTION 7.** A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

**Sales and use tax exemption for materials used to construct, expand, or upgrade a facility that refines renewable feedstock into sustainable aviation fuel.**

1. As used in this section, "renewable feedstock" means ethanol and other types of feedstock from renewable sources.
2. Gross receipts from sales of tangible personal property used to construct, expand, or upgrade a facility that refines renewable feedstock into sustainable aviation fuel are exempt from taxes under this chapter.
3. The exemption may be received only at the time of purchase. To receive the exemption, the owner of the facility must receive from the tax commissioner a certificate indicating the tangible personal property the owner intends to purchase to construct, expand, or upgrade the facility qualifies for the exemption under this section.
4. This chapter and chapter 57-40.2 apply to an exemption under this section.

**6 SECTION 8. AMENDMENT.** Subsection 3 of section 57-40.2-03.3 of the North Dakota Century Code is amended and reenacted as follows:

3. The tax imposed by this section does not apply to:
  - a. Production equipment or tangible personal property as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.2;~~2~~
  - b. Machinery, equipment, or other tangible personal property used to construct an agricultural commodity processing facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;~~2~~
  - c. Tangible personal property used 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 as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.5;~~2~~
  - d. Tangible personal property used to construct or expand a qualifying oil refinery as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.6;~~2~~
  - e. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.10;~~2~~
  - f. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.11;~~2~~
  - g. Materials used in compressing, gathering, collecting, storing, transporting, or injecting carbon dioxide for use in enhanced recovery of oil or natural gas as provided in section 57-39.2-04.14;~~2~~
  - h. Tangible personal property used to construct a qualifying fertilizer or chemical processing facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.15;~~2~~
  - i. Tangible personal property used to construct a qualified straddle plant, a qualified fractionator, or qualified associated infrastructure as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.16.
  - j. Tangible personal property used to construct, expand, or upgrade a facility that refines renewable feedstock into sustainable aviation fuel as authorized or approved by the tax commissioner under section 7 of this Act.

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<sup>6</sup> Section 57-40.2-03.3 was also amended by section 2 of House Bill No. 1430, chapter 546, and section 3 of House Bill No. 1455, chapter 538, and section 3 of House Bill No. 1511, chapter 540.

**SECTION 9. EFFECTIVE DATE - EXPIRATION DATE.** Sections 7 and 8 of this Act are effective for taxable events occurring after June 30, 2023, and remain effective until June 30, 2025, after which sections 7 and 8 become ineffective.

Approved April 20, 2023

Filed April 21, 2023

## CHAPTER 39

### SENATE BILL NO. 2007

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of labor and human rights.

**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 labor and human rights for the purpose of defraying the expenses of the department of labor and human rights, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$2,394,979	\$334,160	\$2,729,139
Operating expenses	<u>338,358</u>	<u>40,049</u>	<u>378,407</u>
Total all funds	\$2,733,337	\$374,209	\$3,107,546
Less estimated income	<u>486,868</u>	<u>16,530</u>	<u>503,398</u>
Total general fund	\$2,246,469	\$357,679	\$2,604,148
Full-time equivalent positions	13.00	0.00	13.00

**SECTION 2. ONE-TIME FUNDING.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Case management system	\$177,717	\$0
Total all funds	\$177,717	\$0
Less estimated income	<u>30,000</u>	<u>0</u>
Total general fund	\$147,717	\$0

Approved April 18, 2023

Filed April 19, 2023

## CHAPTER 40

### SENATE BILL NO. 2008

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the public service commission; to amend and reenact section 49-01-05, subsection 4 of section 49-22-22, and sections 49-22.1-21 and 57-43.2-19 of the North Dakota Century Code, relating to the salaries of the public service commissioners, the transfer and distribution of funds in the highway tax distribution fund, and siting process administrative fees; to provide a 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 public service commission for the purpose of defraying the expenses of the public service commission, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$9,991,488	\$930,538	\$10,922,026
Operating expenses	1,801,570	403,917	2,205,487
Capital assets	25,000	100,000	125,000
Grants	20,000	0	20,000
Abandoned mined lands contractual services	6,000,000	0	6,000,000
Rail rate complaint case	900,000	0	900,000
Railroad safety program	614,724	54,594	669,318
Specialized legal services	420,000	0	420,000
Total all funds	\$19,772,782	\$1,489,049	\$21,261,831
Less estimated income	13,347,095	377,026	13,724,121
Total general fund	\$6,425,687	\$1,112,023	\$7,537,710
Full-time equivalent positions	43.00	2.00	45.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Real-time kinematic equipment	\$120,000	\$0
Indirect cost recovery shortfall	0	101,700
Drone	0	20,000
Weights and measures equipment	0	70,000
Copier replacement	0	10,000
Total all funds	\$120,000	\$201,700
Total other funds	114,600	18,200
Total general fund	\$5,400	\$183,500

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The public service commission shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. 2021-23 BIENNIUM APPROPRIATION - TRANSFER - PUBLIC SERVICE COMMISSION PROGRAM FUND.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$60,000, which the office of management and budget shall transfer to the public service commission program fund for the purpose of establishing a balance in the public service commission program fund, during the period beginning with the effective date of this Act, and ending June 30, 2023.

**SECTION 4. BANK OF NORTH DAKOTA - LINE OF CREDIT.** The Bank of North Dakota shall extend a line of credit to the public service commission to provide funding to pay costs associated with a rail rate complaint case. The line of credit may not exceed \$900,000, and the interest rate associated with the line of credit must be the prevailing interest rate charged to North Dakota governmental entities. The public service commission shall repay the line of credit from amounts available from damages or proceeds received, net of legal fees, from a successful outcome of a rail complaint case. If moneys available on June 30, 2025, are not sufficient to repay the line of credit, the public service commission shall request from the legislative assembly a deficiency appropriation to repay the line of credit.

**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 one hundred ~~fifteen~~<sup>thirty</sup> thousand ~~three hundred four~~ dollars through June 30, ~~2022~~<sup>2024</sup>, and one hundred ~~seventeen~~<sup>thirty</sup> ~~five~~ thousand ~~six~~<sup>two</sup> hundred ~~ten~~ 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.

<sup>7</sup> **SECTION 6. AMENDMENT.** Subsection 4 of section 49-22-22 of the North Dakota Century Code is amended and reenacted as follows:

4. Every applicant under this chapter shall pay to the commission an administrative fee equal to ~~one~~<sup>two</sup> hundred dollars for each one million dollars of original investment, not to exceed ~~twenty-five~~<sup>fifty</sup> thousand dollars. The administrative fee must be deposited in the public service commission program fund.

<sup>8</sup> **SECTION 7. AMENDMENT.** Section 49-22.1-21 of the North Dakota Century Code is amended and reenacted as follows:

**49-22.1-21. Siting process expense recovery - Deposit in special fund - Continuing appropriation.**

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<sup>7</sup> Section 49-22-22 was also amended by section 5 of House Bill No. 1097, chapter 413.

<sup>8</sup> Section 49-22.1-21 was also amended by section 8 of House Bill No. 1097, chapter 413.

1. Every applicant under this chapter shall pay to the commission an application fee:
  - a. An applicant for a certificate of site compatibility shall pay an amount equal to five hundred dollars for each one million dollars of investment in the facility.
  - b. An applicant for a certificate of corridor compatibility shall pay an amount equal to five thousand dollars for each one million dollars of investment in the facility.
  - c. An applicant for a waiver shall pay the amount that would be required for an application for a certificate of site or corridor compatibility for the proposed facility. If a waiver is not granted for a proposed facility, the application fee paid must be allowed as a credit against fees payable under this section in connection with an application under this chapter for a certificate or permit for the proposed facility.
  - d. An applicant for a transfer of a certificate or permit shall pay an amount to be determined by the commission to cover anticipated expenses of processing the application.
  - e. An applicant requesting an amendment to a certificate or permit, or certifying to the commission under subsection 3 of section 49-22.1-01 or obtaining siting authority under subdivision b of subsection 2 or subdivision c of subsection 4 of section 49-22.1-15, shall pay an amount to be determined by the commission to cover anticipated expenses of processing the application.
  - f. The application fee under subdivision a, b, or c may not be less than ten thousand dollars nor more than one hundred thousand dollars.
  - g. ~~If an application fee is less than twenty-five thousand dollars, an~~An applicant may agree to pay additional fees that are reasonably necessary for completion of the site, corridor, or route evaluation and designation process.
2. At if an applicant does not agree to pay additional fees reasonably necessary for completion of the site, corridor, or route evaluation and designation process, at the request of the commission and with the approval of the emergency commission, the applicant shall pay any additional fees as are reasonably necessary for completion of the gas or liquid energy conversion facility site, gas or liquid transmission facility corridor, or gas or liquid transmission facility route evaluation and designation process by the commission. The application fee under subsection 1 and any additional fees required of the applicant under this subsection may not exceed an amount equal to one thousand dollars for each one million dollars of investment in a proposed energy conversion facility or ten thousand dollars for each one million dollars of investment in a proposed gas or liquid transmission facility.
3. A siting process expense recovery fund is established in the state treasury. The commission shall deposit payments received under subsections 1 and 2 in the siting process expense recovery fund. All moneys deposited in the fund are appropriated on a continuing basis to the commission to pay expenses incurred in the siting process. The commission shall specify the time and

method of payment of any fees and shall refund the portion of fees collected under subsections 1 and 2 which exceeds the expenses incurred for the evaluation and designation process.

4. Every applicant ~~for a certificate of site compatibility, certificate of corridor compatibility and route permit, and transfer of a certificate or permit~~ under this chapter shall pay to the commission an administrative fee equal to ~~one~~two hundred dollars for each one million dollars of original investment, not to exceed ~~twenty-five~~fifty thousand dollars. The administrative fee must be deposited into the public service commission program fund.

**SECTION 8. 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. (~~Effective through June 30, 2025~~)**

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 ~~two~~three hundred ~~ninety-seven~~thirty-two thousand three hundred ~~sixty-two~~twenty-seven dollars per year must be transferred to the state treasurer who shall deposit the moneys in the rail safety fund. The highway tax distribution fund must be distributed in the manner as prescribed by section 54-27-19.

~~**Transfer, deposit, and distribution of funds. (Effective after June 30, 2025)** All taxes, license fees, penalties, and interest collected under this chapter must be transferred to the state treasurer who shall deposit moneys in the highway tax distribution fund. The highway tax distribution fund must be distributed in the manner as prescribed by section 54-27-19.~~

**SECTION 9. EMERGENCY.** Sections 3, 6, and 7 of this Act are declared to be an emergency measure.

Approved April 21, 2023

Filed April 24, 2023

## CHAPTER 41

### SENATE BILL NO. 2009

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the agriculture commissioner; to amend and reenact sections 4.1-01-02, 4.1-01-18, 4.1-01-21.1, and 49-22-09.2 of the North Dakota Century Code, relating to the salary of the agriculture commissioner, the federal environmental law impact review committee, the environmental impact mitigation fund, and mitigating environmental impacts; to provide for a transfer; to provide an exemption; and to provide for a legislative management 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 agriculture commissioner for the purpose of defraying the expenses of the agriculture commissioner, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$15,717,126	\$873,888	\$16,591,014
Operating expenses	6,848,052	578,121	7,426,173
Capital assets	15,000	(8,000)	7,000
Grants	9,031,774	3,922,195	12,953,969
Agricultural products utilization commission	1,760,417	3,350,000	5,110,417
North Dakota trade office	1,600,000	500,000	2,100,000
Board of animal health	865,718	0	865,718
Wildlife services	1,457,400	200,000	1,657,400
Pipeline restoration and reclamation oversight program	200,000	0	200,000
Bioscience innovation program transfer	0	6,500,000	6,500,000
Crop harmonization board	<u>75,000</u>	<u>0</u>	<u>75,000</u>
Total all funds	\$37,570,487	\$15,916,204	\$53,486,691
Less estimated income	<u>24,110,775</u>	<u>6,856,343</u>	<u>30,967,118</u>
Total general fund	\$13,459,712	\$9,059,861	\$22,519,573
Full-time equivalent positions	79.00	1.00	80.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Agricultural products utilization commission	\$2,700,000	\$3,000,000
Soil health grants	700,000	0

Grasslands grazing grants	5,000,000	1,000,000
Bioscience innovation grant program transfer	5,500,000	6,500,000
Food distribution grants	0	1,000,000
Federal environmental law impact review	5,000,000	0
Intermodal facility construction grant program	2,000,000	0
North Dakota trade office	0	<u>500,000</u>
Total all funds	\$20,900,000	\$12,000,000
Less estimated income	<u>10,400,000</u>	<u>4,000,000</u>
Total general fund	\$10,500,000	\$8,000,000

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The agriculture commissioner shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO BIOSCIENCE INNOVATION FUND - BIOSCIENCE INNOVATION GRANT PROGRAM.** The office of management and budget shall transfer \$5,500,000 from the strategic investment and improvements fund to the bioscience innovation grant fund for the purpose of the bioscience innovation grant program under section 4.1-01-20.1 for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 4. TRANSFER - GENERAL FUND TO BIOSCIENCE INNOVATION FUND - BIOSCIENCE INNOVATION GRANT PROGRAM.** The bioscience innovation program transfer line item in section 1 of this Act includes \$6,500,000 from the general fund, which the office of management and budget shall transfer to the bioscience innovation grant fund for the purpose of the bioscience innovation grant program under section 4.1-01-20.1 for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 5. TRANSFER - ENVIRONMENT AND RANGELAND PROTECTION FUND TO ENVIRONMENTAL IMPACT MITIGATION FUND - MITIGATION OF AGRICULTURAL LAND.** The agriculture commissioner shall transfer \$250,000 from the environment and rangeland protection fund to the environmental impact mitigation fund for the purpose of mitigation of agricultural land under section 4.1-01-21.1 for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 6. ESTIMATED INCOME - TRANSFER - DEPARTMENT OF WATER RESOURCES.** The estimated income line item in section 1 of this Act includes the sum of \$125,000 which the department of water resources shall transfer to the agriculture commissioner for the purpose of defraying the expenses of the wildlife services program.

**SECTION 7. TRANSFER - ENVIRONMENT AND RANGELAND PROTECTION FUND - MINOR USE PESTICIDE FUND.** The agriculture commissioner shall transfer \$325,000 from the environment and rangeland protection fund to the minor use pesticide fund during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 8. ESTIMATED INCOME - ENVIRONMENT AND RANGELAND PROTECTION FUND.** The estimated income line item in section 1 of this Act includes the sum of \$7,351,547 from the environment and rangeland protection fund for the purpose of defraying the expenses of various agriculture commissioner programs.

**SECTION 9. ESTIMATED INCOME - GAME AND FISH FUND.** The estimated income line item in section 1 of this Act includes the sum of \$648,228 from the game

and fish department operating fund for the purpose of defraying the expenses of various agriculture commissioner programs.

**SECTION 10. ESTIMATED INCOME - TRANSFER - BANK OF NORTH DAKOTA PROFITS - AGRICULTURAL PRODUCTS UTILIZATION COMMISSION.**

The estimated income line item in section 1 of this Act includes the sum of \$3,000,000 which the Bank of North Dakota shall transfer from the Bank's current earnings and undivided profits to the agriculture commissioner for deposit in the agricultural products utilization fund for the purpose of defraying the expenses of the agricultural products utilization commission for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 11. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - GRASSLANDS GRAZING GRANTS - MATCHING FUNDS REQUIREMENT.**

The estimated income line item in section 1 of this Act includes the sum of \$1,000,000 from the strategic investment and improvements fund for the purpose of providing grasslands grazing grants to an organization representing cooperative grazing associations in the state. To be eligible for a grant under this program, an organization must provide one dollar of matching funds from nonstate sources for every four dollars of grant funding. An organization that receives a grant under this program may distribute the funding to cooperative grazing associations for eligible infrastructure projects, which must be located on national grasslands within the state. Eligible infrastructure projects include water development; fencing; conservation initiatives; compliance with federal permitting requirements, including fees for professional services; and other projects to enhance wildlife habitat or capture carbon, or to increase the health of grasslands. Program participants shall develop and implement a grazing land plan in compliance with local soil conservation district guidance and the plan must be approved by the local soil conservation district. The agriculture commissioner shall establish additional guidelines for the program.

**SECTION 12. ESTIMATED INCOME - ABANDONED OIL AND GAS WELL PLUGGING AND SITE RECLAMATION FUND.**

The estimated income line item in section 1 of this Act includes the sum of \$700,000 from the abandoned oil and gas well plugging and site reclamation fund, of which \$200,000 is for the purpose of defraying the expenses of the pipeline restoration and reclamation program and \$500,000 is for the purpose of defraying the expenses of the post-production royalty oversight program.

**SECTION 13. TRADE OFFICE - MATCHING FUND REQUIREMENT.**

The North Dakota trade office line item and the general fund appropriation in section 1 of this Act include \$2,100,000 of funding related to the North Dakota trade office. The agriculture commissioner may spend sixty percent of this amount without requiring any matching funds from the trade office. Any additional amounts may be spent only to the extent the North Dakota trade office provides one dollar of matching funds from private or other public sources for each one dollar provided by the agriculture commissioner. Matching funds may include money spent by businesses or organizations to pay salaries to export assistants, providing training to export assistants, or to purchase computer equipment as part of the North Dakota trade office's export assistant program.

**SECTION 14. WATERBANK PROGRAM - MATCHING FUNDS.**

The salaries and wages line item in section 1 of this Act includes up to \$50,000 from the general fund for matching funds for the North Dakota outdoor heritage fund grant provided for the waterbank program.

**SECTION 15. AMENDMENT.** Section 4.1-01-02 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-01-02. Salary of agriculture commissioner.**

The annual salary of the agriculture commissioner is one hundred ~~twenty-one~~thirty-one thousand ~~five hundred fifty-three~~four hundred twenty-three dollars through June 30, ~~2022~~2024, and one hundred ~~twenty-three~~thirty-six thousand ~~nine~~six hundred ~~eighty-four~~eighty dollars after that date.

**SECTION 16. AMENDMENT.** Section 4.1-01-18 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-01-18. Federal environmental law impact review committee.**

1. The federal environmental law impact review committee consists of:
  - a. The commissioner, who shall serve as the chairman;
  - b. The governor or the governor's designee;
  - c. The majority leader of the house of representatives, or the leader's designee;
  - d. The majority leader of the senate, or the leader's designee;
  - e. One member of the legislative assembly from the minority party, selected by the chairman of the legislative management;
  - f. One individual appointed by the North Dakota corn growers association;
  - g. One individual appointed by the North Dakota grain growers association;
  - h. One individual appointed by the North Dakota soybean growers association;
  - i. One individual appointed by the North Dakota stockmen's association;
  - j. One individual appointed by the North Dakota farm bureau;
  - k. One individual appointed by the North Dakota farmers union;
  - l. The chairman of the public service commission or the chairman's designee;
  - m. The director of the department of water resources or the director's designee;
  - n. The director of the game and fish department, or the director's designee;
  - o. The director of the department of transportation, or the director's designee;
  - p. The director of the department of environmental quality, or the director's designee;
  - q. One representative of an investor-owned utility company;

- r. One representative from the North Dakota association of rural electric cooperatives; and
  - s. Two individuals from the energy community, of which one individual must be a representative of an organization that supports lignite energy in the state appointed by the commissioner and one individual must be a representative of an organization that supports oil and gas activity in the state appointed by the governor.
2. The committee shall review federal environmental legislation and regulations detrimentally impacting or potentially detrimentally impacting the state's agricultural, energy, or oil production sectors. The committee shall confer with the attorney general with respect to participation in administrative or judicial processes pertaining to the legislation or regulations.
  3. a. Any member of the legislative assembly serving on the committee is entitled to compensation at the rate provided for attendance at interim committee meetings and reimbursement for expenses, as provided by law for state officers, if the member is attending meetings of the committee or performing duties directed by the committee.
  - b. The compensation and reimbursement of expenses, as provided for in this subsection, are payable by the legislative council.

**SECTION 17. AMENDMENT.** Section 4.1-01-21.1 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-01-21.1. Environmental impact mitigation fund - Report to legislative management - Continuing appropriation.**

1. There is created in the state treasury the environmental impact mitigation fund. The fund consists of all moneys deposited in the fund under section 49-22-09.2. All moneys in the fund are appropriated to the commissioner on a continuing basis for ~~distribution~~disbursement by the agriculture commissioner to landowners for the mitigation of agricultural land impacted by development ~~as set forth under subsection 2 in accordance with this section.~~
2. ~~Funding~~Moneys in the fund may be used only for:
  - a. ~~Contracting for consultation~~Consultation with environmental scientists or engineers, ~~industry specialists, or others~~ for relevant services to analyze or implement mitigation required from the impact of development; and
  - b. ~~Reclamation or mitigation~~Creation, restoration, or mitigation of similar habitat affected by the construction or operation of an energy conversion or transmission facility. Mitigation of adverse impacts from development under this section shall be conducted in the following order of priority:
    - (1) The area immediately impacted by the development;
    - (2) The county impacted by the development;
    - (3) The region impacted by the development; and
    - (4) Other areas within the state.

3. The commissioner is not subject to chapter 54-44.4 when contracting for services under this chapter.
4. ~~The federal environmental law impact review committee shall establish criteria for disbursement of environmental impact funds.~~ In consultation with the federal environmental law impact review committee, the commissioner shall adopt rules pursuant to chapter 28-32 to implement the provisions of this section.
5. ~~The commissioner shall make disbursements based upon the determinations made by the federal environmental law impact review committee.~~
6. ~~For purposes of this section, the federal environmental law impact review committee shall hold meetings as the chairman determines necessary at a time and place set by the chairman. Upon written request of any four members, the presiding officer shall call a special meeting of the committee.~~
7. ~~The federal environmental law impact review committee shall make determinations for the disbursement of grants in accordance with subsection 2 and provide those determinations to the commissioner.~~ Easements or leaseholds purchased by a person to mitigate adverse environmental effects of the construction or operation of an energy conversion or transmission facility under chapter 49-22 must be limited to the operational life of the facility as defined under chapter 49-22. Any payment made to mitigate adverse environmental effects of the construction or operation of an energy conversion or transmission facility under chapter 49-22 must be made to the commissioner who shall deposit the payment into the environmental impact mitigation fund. Prior to the public service commission issuing a permit or certificate to an applicant under chapter 49-22, the commissioner shall notify the public service commission of mitigation efforts under this section to create, restore, or mitigate similar habitat affected by the construction or operation of an energy conversion or transmission facility.
8. ~~6.~~ The federal environmental law impact review committee commissioner shall provide a biennial report of environmental impact mitigation fund disbursements to the legislative management.
9. ~~7.~~ For purposes of this section, the environmental impact mitigation fund is not subject to subsection 2 of section 4.1-01-18.

**SECTION 18. AMENDMENT.** Section 49-22-09.2 of the North Dakota Century Code is amended and reenacted as follows:

**49-22-09.2. Mitigating direct environmental impacts.**

1. ~~An applicant may elect to provide payment to mitigate any assessed adverse direct environmental impacts of a proposed site, corridor, route, or facility. The applicant may elect to provide the payment to the agriculture commissioner.~~
2. ~~The agriculture commissioner shall deposit any moneys paid to mitigate the adverse environmental impacts of a proposed site, corridor, route, or facility as follows:~~
  - a. ~~Fifty percent into the environmental impact mitigation fund; and~~
  - b. ~~Fifty percent into the federal environmental law impact review fund.~~ If an applicant elects to provide a payment to mitigate the environmental impact

of the construction or operation of an energy conversion or transmission facility, the payment must be made to the agriculture commissioner who shall deposit the payment into the environmental impact mitigation fund under section 4.1-01-21.1. Nothing in this section shall be construed to limit an applicant from conducting mitigation activities.

**SECTION 19. WILDLIFE SERVICES PROGRAM - INDIRECT COSTS.** The wildlife services line item in section 1 of this Act includes the sum of \$1,657,400 for the purpose of defraying the expenses of the wildlife services program during the biennium beginning July 1, 2023, and ending June 30, 2025. The agriculture commissioner may not use funding appropriated for the program to pay indirect costs as part of the United States department of agriculture animal and plant health inspection service wildlife services program.

**SECTION 20. EXEMPTION - COVID-19 SPECIALTY CROP BLOCK GRANT PROGRAM AND COVID-19 STRESS ASSISTANCE PROGRAM.** The amount of \$5,500,000 appropriated from federal funds derived from COVID-19 funds, of which \$5,000,000 was for the specialty crop block grant program and \$500,000 was for stress assistance program operating expenses, during the 2019-21 biennium in section 1 of chapter 27 and continued into the 2021-23 biennium in section 2 of chapter 27 of the 2021 Session Laws is not subject to section 54-44.1-11 and is available for the programs during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 21. EXEMPTION - GRASSLANDS GRAZING GRANTS.** The amount of \$5,000,000 appropriated from the strategic investment and improvements fund for grasslands grazing grants in the grants line item in section 1 of chapter 9 of the 2021 Session Laws is not subject to section 54-44.1-11 and may be continued into the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 22. LEGISLATIVE MANAGEMENT STUDY - ENERGY CONVERSION OR TRANSMISSION FACILITY - ENVIRONMENTAL MITIGATION.** During the 2023-24 interim, the legislative management shall consider studying plans for mitigation of adverse wildlife and environmental impacts and monetary payments made to state agencies, contractors, nongovernmental organizations, and others by applicants or other persons for mitigation during the siting and operation of energy conversion or transmission facilities. The study must include consideration of the provisions of law that affect the ability of developers to effectively mitigate adverse wildlife habitat and environmental impacts, applicant payments used for the purchase of perpetual or nonperpetual conservation easements, the distinction between an adverse direct environmental effect or an adverse indirect environmental effect, methods to monetarily quantify adverse direct or adverse indirect environmental effects, and alternative programs that may be used or developed for the mitigation of adverse wildlife and environmental effects. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 23. LEGISLATIVE MANAGEMENT STUDY - TRANSFER OF AGRICULTURE EDUCATION PROGRAMS.** During the 2023-24 interim, the legislative management shall consider studying the feasibility and desirability of transferring agriculture education programs in the department of career and technical education to the agriculture commissioner. The study must include an analysis of each program, duties and responsibilities of the programs and department of career and technical education staff, the potential to gain administrative and resource efficiencies if the programs are transferred to the agriculture commissioner, and future staffing, operating, and equipment needs of the programs. The legislative

management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

Approved May 5, 2023

Filed May 9, 2023

## CHAPTER 42

### SENATE BILL NO. 2010

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the insurance commissioner; to amend and reenact sections 26.1-01-09, 26.1-23.1-02, and 26.1-23.1-06 of the North Dakota Century Code, relating to the salary of the insurance commissioner and government self-insurance pools.

#### 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 the insurance commissioner, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$8,076,281	\$2,591,891	\$10,668,172
Operating expenses	1,507,359	1,130,308	2,637,667
Capital assets	0	147,540	147,540
Grants	<u>0</u>	<u>2,400,000</u>	<u>2,400,000</u>
Total special funds	\$9,583,640	\$6,269,739	\$15,853,379
Full-time equivalent positions	38.00	9.00	47.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Office remodel	\$100,000	\$75,000
State fire marshal equipment	0	72,540
State flexibility to stabilize the market grant	662,000	0
Coal and fossil fuel industry insurance study	200,000	0
Reinsurance pool study	200,000	0
Retirement leave payouts	<u>0</u>	<u>98,300</u>
Total special funds	\$1,162,000	\$245,840

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The insurance commissioner shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. ADDITIONAL INCOME - APPROPRIATION - REPORTING.** In addition to the amounts appropriated in section 1 of this Act, any federal funds that become available are appropriated to the insurance commissioner for the biennium beginning July 1, 2023, and ending June 30, 2025. The insurance commissioner shall

report any additional federal funds under this section to the office of management and budget and the legislative council.

**SECTION 4. 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 one hundred ~~twelve~~<sup>thirty</sup> thousand ~~two~~<sup>hundred</sup> ~~forty-one~~ dollars through June 30, ~~2022~~<sup>2024</sup>, and one hundred ~~fourteen~~<sup>thirty-five</sup> thousand ~~four~~<sup>two</sup> hundred ~~eighty-six~~ dollars thereafter.

**SECTION 5. AMENDMENT.** Section 26.1-23.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-23.1-02. Government self-insurance pools not insurers.**

Any government self-insurance pool organized under chapter 32-12.1 is not an insurance company or insurer. The coverages provided by ~~such~~<sup>the</sup> pools and the administration of ~~such~~<sup>the</sup> pools do not constitute the transaction of insurance business. Participation in a government self-insurance pool under this chapter does not constitute a waiver of any existing immunities otherwise provided by the constitution or laws of this state. In all respects not specifically provided for under this chapter, a government self-insurance pool is subject to chapters 26.1-01, 26.1-02, 26.1-04, 26.1-25, and 26.1-26 with the exception of sections 26.1-26-06, 26.1-26-07, and 26.1-26-13.1 relating to insurance companies generally.

**SECTION 6. AMENDMENT.** Section 26.1-23.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-23.1-06. Pool reserve records confidential - Open records.**

1. Information regarding that portion of the funds or liability reserves of a government self-insured government pool established for purposes of satisfying a specific claim or cause of action is confidential. A person is not entitled to discover that portion of the funds or liability reserves established for purposes of satisfying a claim or cause of action, except that the reserve is discoverable in any supplementary or ancillary proceeding to enforce a judgment against the pool or a governmental entity participating in the pool.
2. Unless otherwise provided by law, a government self-insurance pool record, as defined under section 44-04-17.1, is subject to chapter 44-04.

Approved May 5, 2023

Filed May 9, 2023

## CHAPTER 43

### SENATE BILL NO. 2011

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the securities department; and to provide a report.

#### 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 other income, to the securities department for the purpose of defraying the expenses of the securities department, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$2,213,881	\$138,421	\$2,352,302
Operating expenses	595,103	311,327	906,430
Total special funds	\$2,808,984	\$449,748	\$3,258,732
Full-time equivalent positions	10.00	0.00	10.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 biennium one-time funding items included in the appropriation of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Technology enhancements	\$0	\$150,000
Total special funds	\$0	\$150,000

The 2023-25 biennium one-time funding amounts are not part of the entity's base budget for the 2025-27 biennium. The securities department shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

Approved April 18, 2023

Filed April 19, 2023

# CHAPTER 44

## SENATE BILL NO. 2012

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of various divisions of the department of health and human services; to provide an appropriation to the university of North Dakota school of medicine and health sciences; to provide an exemption; to create and enact a new section to chapter 50-06 and a new subsection to section 50-24.1-07 of the North Dakota Century Code and two new subsections to the new section to chapter 54-52.1 as created by section 2 of Senate Bill No. 2140, as approved by the sixty-eighth legislative assembly, of the North Dakota Century Code, relating to public employee health benefits coverage of insulin, a North Dakota legislative health care task force, and Medicaid claims; to amend and reenact subsection 2 of section 12.1-04-07, sections 50-01.2-01, 50-06-42, 50-11.1-02, 50-11.1-22, 50-11.1-23, 50-11.1-24, and 50-24.1-26, subsection 5 of section 50-24.1-37, and sections 50-24.5-02.3 and 50-29-04 of the North Dakota Century Code, relating to fitness to proceed examination, human service zone board membership, the substance use disorder treatment voucher system, Medicaid in-home services, the best in class program, basic care payment rates, the Medicaid expansion program, and the children's health insurance program; to repeal section 50-06-32.1 of the North Dakota Century Code, relating to the autism voucher; to provide a statement of legislative intent; to provide for a legislative management study; to provide for a report; 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 department of health and human services for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

Subdivision 1.

#### MANAGEMENT

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$21,363,556	(\$21,363,556)	\$0
Salaries and wages block grant	0	456,750,493	456,750,493
Operating expenses	151,161,924	95,654,000	246,815,924
Capital assets	75,000	0	75,000
Total all funds	\$172,600,480	\$531,040,937	\$703,641,417
Less estimated income	92,905,426	293,796,361	386,701,787
Total general fund	\$79,695,054	\$237,244,576	\$316,939,630

Subdivision 2.

#### PROGRAM AND POLICY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$122,081,310	(\$122,081,310)	\$0
Operating expenses	176,078,719	59,740,165	235,818,884
Capital assets	10,000	0	10,000
Grants	467,144,387	168,924,549	636,068,936
Grants - medical assistance	3,028,666,463	396,605,903	3,425,272,366
Opioid prevention	0	2,000,000	2,000,000
Total all funds	\$3,793,980,879	\$505,189,307	\$4,299,170,186
Less estimated income	2,499,452,627	269,279,579	2,768,732,206
Total general fund	\$1,294,528,252	\$235,909,728	\$1,530,437,980

Subdivision 3.

#### FIELD SERVICES

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Human service centers	\$163,213,829	(\$115,810,747)	\$47,403,082
Institutions	130,383,428	(69,570,994)	60,812,434
Total all funds	\$293,597,257	(\$185,381,741)	\$108,215,516
Less estimated income	114,273,300	(84,296,246)	29,977,054
Total general fund	\$179,323,957	(\$101,085,495)	\$78,238,462

Subdivision 4.

#### COUNTY SOCIAL SERVICE FINANCING

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
County social services	\$189,917,386	\$7,746,275	\$197,663,661
Total all funds	\$189,917,386	\$7,746,275	\$197,663,661
Less estimated income	188,676,995	8,969,793	197,646,788
Total general fund	\$1,240,391	(\$1,223,518)	\$16,873

Subdivision 5.

#### TOTAL - SECTION 1

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$1,554,787,654	\$370,845,291	\$1,925,632,945
Grand total special funds	2,895,308,348	487,749,487	3,383,057,835
Grand total all funds	\$4,450,096,002	\$858,594,778	\$5,308,690,780
Full-time equivalent positions	2,265.33	0.00	2,265.33

**SECTION 2. ONE-TIME FUNDING.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Technology projects	\$67,596,372	\$71,000,000
Quality measures	45,375	0
Nursing payment methodology	7,200,000	0
Developmental disabilities provider stabilization grants	125,000	0
Human service center projects	724,000	735,154
Opioid settlement funding	2,000,000	0

Special session one-time appropriations	138,389,558	0
State hospital design	0	12,500,000
Service grants	0	585,000
Cross-disability advisory council	0	1,400,000
Behavioral health facility grants	0	1,950,000
Base care payment study	0	600,000
Health care task force	0	750,000
Operating inflation	0	20,564,344
Program integrity audits	0	4,500,000
Pregnant and parenting residential	0	1,000,000
Law enforcement telehealth	0	2,650,000
Total all funds	\$216,080,305	\$118,234,498
Less estimated income	<u>191,847,089</u>	<u>103,752,326</u>
Total general fund	\$24,233,216	\$14,482,172

**SECTION 3. APPROPRIATION - UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE AND HEALTH SCIENCES - CLINICAL INTEGRATED NETWORK GRANT.**

1. There is appropriated out of any moneys in the community health trust fund in the state treasury, not otherwise appropriated, the sum of \$3,500,000, or so much of the sum as may be necessary, to the university of North Dakota school of medicine and health sciences for the purpose of the center for rural health awarding a grant to a clinically integrated network, for the biennium beginning July 1, 2023, and ending June 30, 2025.
2. To qualify for a grant under this section, an applicant:
  - a. Must be a statewide value-based clinically integrated network that supports a majority of the independent critical access hospitals in the state.
  - b. Must certify one dollar of matching funds for every five dollars of grant funds awarded.
  - c. Shall demonstrate a strategic plan to accomplish the following goals:
    - (1) Implementation of a data-sharing platform;
    - (2) Utilization of value-based care contract modeling;
    - (3) Utilization of data analytics software to provide for risk stratification and referral management capabilities;
    - (4) Development of unified care management practices; and
    - (5) Staffing of the clinically integrated network.
  - d. Shall agree during the 2023-25 and 2025-27 bienniums to make annual reports to the department of health and human services and the center for rural health on the use of the grant funds and the status of accomplishing the clinically integrated network strategic plan goals.

**SECTION 4. APPROPRIATION - 2021-23 BIENNIUM - CHILD SUPPORT.** There is appropriated out of any moneys in the department of health and human services operating fund in the state treasury, not otherwise appropriated, the sum of \$4,500, or

so much of the sum as may be necessary, to the the department of health and human services for the purpose of repayment of moneys, including interest, not withheld by the state in accordance with section 14-09-09.16 from an obligor's unemployment benefits from June 1, 2021, through September 30, 2021, for the period beginning with the effective date of this section and ending June 30, 2023.

**SECTION 5. FUNDING TRANSFERS - EXEMPTION - AUTHORIZATION - REPORT.** Notwithstanding section 54-16-04, the director of the office of management and budget shall transfer appropriation authority between line items within subdivisions 1, 2, 3, and 4 of section 1 of this Act, section 1 of House Bill No. 1004 as approved by the sixty-eighth legislative assembly, and any remaining appropriation authority for the department of health and human services approved by the sixty-eighth legislative assembly for the biennium beginning July 1, 2023, and ending June 30, 2025, as requested by the department of health and human services. The department of health and human services may use the transfer authority in this section to transfer or expend funds for the continuation of the community behavioral health program pursuant to section 54-23.3-10. The department of health and human services shall notify the legislative council of any transfer made pursuant to this section. The department shall report to the budget section after June 30, 2024, any transfer made in excess of \$50,000 and to the appropriations committees of the sixty-ninth legislative assembly regarding any transfers made pursuant to this section.

**SECTION 6. TRANSFER OF APPROPRIATION AUTHORITY.** Section 1 of this Act and section 1 of House Bill No. 1004 include appropriation authority for the department of health and human services for the biennium beginning July 1, 2023, and ending June 30, 2025. On July 1, 2023, the office of management and budget shall combine the appropriation authority contained in section 1 of this Act and section 1 of House Bill No. 1004, and any other appropriation authority for the department of health and human services in other bills approved by the sixty-eighth legislative assembly, into one budget for the department of health and human services. The department of health and human services shall submit one budget request for the biennium beginning July 1, 2025, and ending June 30, 2027.

**SECTION 7. FULL-TIME EQUIVALENT POSITION BLOCK GRANT PROGRAM - REPORT.** Subdivision 1 of section 1 of this Act includes funding for a full-time equivalent position block grant program. This funding, along with salaries and wages funding appropriated in House Bill No. 1004, as approved by the sixty-eighth legislative assembly, is available to fund full-time equivalent positions as determined by the department of health and human services. Notwithstanding any other provision of law, the department is authorized to increase or decrease authorized full-time equivalent positions subject to the availability of funds and the provisions of this section. The department may not increase full-time equivalent positions for the purpose of transferring human service zone employees to state employment. Pursuant to section 5 of this Act, the department is authorized to transfer funding to and from the salaries and wages block grant line item. The department shall report to the office of management and budget and legislative council any adjustments to full-time equivalent positions. The department shall provide reports to the legislative management regarding the use of funding for the program.

**SECTION 8. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - HUMAN SERVICE FINANCE FUND.** The office of management and budget shall transfer the sum of \$26,950,000 from the strategic investment and improvements fund to the human service finance fund during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 9. ESTIMATED INCOME - HUMAN SERVICE FINANCE FUND.** The estimated income line items in subdivisions 1 and 4 of section 1 of this Act includes the sum of \$226,950,000 from the human service finance fund for state-paid economic assistance and social and human services.

**SECTION 10. ESTIMATED INCOME - COMMUNITY HEALTH TRUST FUND.** The estimated income line items in subdivisions 1 and 2 of section 1 of this Act includes the sum of \$24,317,500 from the community health trust fund for the following purposes:

1. The sum of \$20,400,000 for the child support computer replacement project;
2. The sum of \$1,867,500 for the 988 crisis hotline program;
3. The sum of \$700,000 for costs to implement the cross-disability advisory council;
4. The sum of \$600,000 for a study of basic care funding rates; and
5. The sum of \$750,000 for costs of the health care task force.

**SECTION 11. ESTIMATED INCOME - HEALTH CARE TRUST FUND.** The estimated income line item in subdivision 2 of section 1 of this Act includes the sum of \$500,000 from the health care trust fund for basic care facility bad debt expense.

**SECTION 12. ESTIMATED INCOME - FEDERAL STATE FISCAL RECOVERY FUND.** The estimated income line items in subdivisions 2 and 3 of section 1 of this Act includes the sum of \$3,235,000 from the federal state fiscal recovery fund for the following purposes:

1. The sum of \$2,650,000 to implement a virtual behavioral health crisis care program for rural law enforcement;
2. The sum of \$300,000 for crisis organizations that provide crisis services to young adults who are at risk of being homeless or experiencing other serious adverse life events. After July 1, 2024, this funding may be provided only to organizations that are certified in services provided by the organization; and
3. The sum of \$285,000 for grants to volunteer-based ecumenical ministry organizations.

**SECTION 13. ESTIMATED INCOME - CHARITABLE GAMING OPERATING FUND.** Notwithstanding section 53-06.1-11.2, the estimated income line item in subdivision 2 of section 1 of this Act includes the sum of \$500,000 from the charitable gaming operating fund for costs of gambling disorder prevention services.

**SECTION 14. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND.** The estimated income line item in subdivision 5 of section 1 of this Act includes the sum of \$25,235,154 from the strategic investment and improvements fund for the following purposes:

1. The sum of \$11,000,000 for the procurement and grants management system;
2. The sum of \$12,500,000 for the design of a new state hospital;

3. The sum of \$1,000,000 for pregnant and parenting women residential facilities; and
4. The sum of \$735,154 for projects at the southeast human service center.

**SECTION 15. BEHAVIORAL HEALTH FACILITY GRANTS.** Section 1 of this Act includes the sum of \$1,950,000 from the general fund for the purpose of providing a one-time behavioral health facility grant to establish a behavioral health facility in the northwest human service center region, for the biennium beginning July 1, 2023, and ending June 30, 2025. The department of health and human services shall provide a grant as follows:

1. The grant recipient must provide matching funds of \$1,750,000 to establish the facility.
2. The grant term must be for five years.
3. The requirements of chapter 54-44.4 do not apply to the selection of a grant recipient, the grant award, or payments made under this section.
4. To receive the grant, the behavioral health facility shall:
  - a. Submit an application in the form and manner prescribed by the department;
  - b. Enter a grant agreement with the department;
  - c. Use grant funds to support the provision of behavioral health in the grant award service areas;
  - d. Provide and disclose information needed to comply with the department's data collection requirements; and
  - e. Operate in compliance with grant requirements.
5. The department may recapture grant funds distributed to a grant recipient found by the department to be out of compliance with the requirements established by the grant program, including ending or reducing the operation of the behavioral health facility in the service area.
6. The department may not collect property, equipment, or supplies purchased with grant funds from the grant recipient after successful completion of the terms of the grant.

**SECTION 16. HEALTH CARE TASK FORCE - APPROPRIATION - REPORT.**

Subdivision 1 of section 1 of this Act includes the sum of \$750,000 from the community health trust fund for expenses of the health care task force and for the purpose of facilitating the task force. The task force may seek funding from outside sources and any funds received are appropriated to the department of health and human services for activities of the task force for the biennium beginning July 1, 2023, and ending June 30, 2025. The purpose of the task force is to understand and create transparency around health care costs and the drivers of cost growth with the goal of lessening the impact of rising health care costs to citizens, businesses, and government. The task force shall take a holistic view to include the full payor mix, including the uninsured and charity care. The task force shall collect and analyze health care spending data to create meaningful actions to slow spending growth and

improve health care access and quality. The task force shall meet at least once each quarter and may request, obtain, review, and analyze information relating to North Dakota health care, including data, reports, audits, and other information as requested by the task force.

**SECTION 17. CAPITAL PAYMENTS.** During the biennium beginning July 1, 2023, and ending June 30, 2025, the department of health and human services is authorized to expend funds for the payment of special assessments at the state hospital, southeast human service center, and life skills and transition center. Pursuant to section 5 of this Act, the director of the office of management and budget may transfer appropriation authority between line items within subdivisions 1, 2, and 3 of section 1 of this Act, section 1 of House Bill No. 1004, and any remaining appropriation authority for the department of health and human services approved by the sixty-eighth legislative assembly. The department may transfer funds for the payment of special assessments at the state hospital, southeast human service center, and life skills and transition center ahead of the special assessments schedule. Notwithstanding section 54-27-12, the department may spend funds for the payment of special assessments at the state hospital and life skills and transition center.

**SECTION 18. CAPITAL PROJECTS - EMERGENCY COMMISSION APPROVAL.** During the biennium beginning July 1, 2023, and ending June 30, 2025, the department of health and human services is authorized to proceed with the demolition of the administrative building and employee building and associated tunnels at the state hospital. Pursuant to section 5 of this Act, the director of the office of management and budget may transfer appropriation authority between line items within subdivisions 1, 2, and 3 of section 1 of this Act, section 1 of House Bill No. 1004, and any remaining appropriation authority for the department of health and human services approved by the sixty-eighth legislative assembly. The department may transfer funds for the demolition of the identified buildings and associated tunnels and for emergency capital projects. Notwithstanding section 54-27-12, the department of health and human services may spend up to \$5,000,000 for emergency projects under this section and may seek emergency commission approval to spend more than \$5,000,000 under this section.

**SECTION 19. CHILD CARE FINANCIAL ASSISTANCE - DIRECT PAYMENTS.** Notwithstanding subsection 3 of section 50-11.1-14.1, the department may provide financial assistance to beneficiaries related to child care services. The requirements of chapter 54-44.4 do not apply to this subsection, including the selection of recipients and the disbursement of funds.

**SECTION 20. PERMANENT SUPPORTIVE HOUSING GRANTS.** Subdivision 2 of section 1 of this Act includes the sum of \$4,672,536 from the general fund for permanent supportive housing grants. The department of health and human services shall develop a funding methodology to distribute the funding to qualified entities that utilize best practices for permanent supportive housing, provide recovery-oriented and person-centered services, submit process and outcome measures to the department, and authorize the department to conduct onsite visits to review program operations.

**SECTION 21. STATE HOSPITAL PROJECT - COMMUNITY ACUTE PSYCHIATRY - REPORT.** Subdivision 3 of section 1 of this Act includes the sum of \$12,500,000 from the strategic investment and improvements fund as identified in section 14 of this Act for the design of a new state hospital. As part of the design process, the department of health and human services shall consider statewide acute psychiatric needs, including the establishment of acute psychiatric facilities in

Dickinson, Williston, Minot, Devils Lake, and Grand Forks and shall consider collaborating and entering partnerships with local mental health and substance use disorder providers. The department shall present a report to the sixty-ninth legislative assembly regarding options for a new state hospital. The requirements of chapter 54-44.4 do not apply to the selection of a vendor, the procurement award, or payments made under this section regarding the design process and design of the new state hospital.

**SECTION 22. EXPENDITURES MAY NOT EXCEED APPROPRIATION - MEDICAL ASSISTANCE EXPANSION PROGRAM - APPLICATION.**

1. Subdivision 2 of section 1 of this Act includes the sum of \$802,616,809, of which \$80,261,681 is from the general fund, for the medical assistance expansion program for the biennium beginning July 1, 2023, and ending June 30, 2025. The expenditures for individuals eligible for the medical assistance expansion program may not exceed this amount.
2. The department of health and human services may exceed appropriations for increases in medical assistance expansion program caseload, for the addition of coverage consistent with the traditional Medicaid 1915(i) state plan, utilization rates, and unwinding of the federal Medicaid continuous enrollment requirement, and reduction in federal medical assistance percentage.
3. The managed care organization under contract with the department to manage the medical assistance expansion program shall reimburse providers within the same provider type and specialty at consistent levels and with consistent methodology and may not provide incentive, quality, or supplemental payments to providers, unless part of a value-based program approved by the department. The managed care organization shall reimburse all North Dakota substance use providers of American society of addiction medicine level 2.5 at consistent levels and with consistent methodology. The managed care organization may consider urban and rural providers as different provider types.
4. The managed care organization and the department of health and human services shall ensure payments to Indian or Tribal 638 health care providers, federally qualified health centers, and rural health clinics meet the federally required minimum levels of reimbursement. Critical access hospitals may not be paid less than one hundred percent of Medicare allowable costs and human service centers may not be paid less than one hundred percent of the current traditional Medicaid rate. Behavioral health services involving partial hospitalization, intensive outpatient, professional services, and residential behavioral health services provided in facilities that are not institutions for mental diseases are not subject to the provisions in subsection 6.
5. The department of health and human services shall ensure providers within the same provider type and specialty are reimbursed at consistent levels and with consistent methodology and shall ensure the capitation rates under risk contracts are actuarially sound and are adequate to meet managed care organization contractual requirements regarding availability of services, assurance of adequate capacity and services, and coordination and continuity of care.
6. Except for the provisions in subsection 4, managed care organization premium payments must be built using the assumption that rates paid to providers under the medical assistance expansion program may not exceed

one hundred forty-five percent of Medicare reimbursement. This subsection applies to any medical assistance expansion program provider fee schedule that becomes effective on or after January 1, 2025.

**SECTION 23. DEPARTMENT OF HEALTH AND HUMAN SERVICES - PUBLIC AND PARENTING RESOURCE WEBSITE.** The department of health and human services shall develop and maintain a state internet website that provides information and links to social services, financial assistance, parenting information, maternal and childbirth life services, planning guidance, care centers and agencies, and other available public and private resources for expectant families and new parents. The department may contract with a third party for the development of the website. The website must be operational by August 1, 2023, and have a domain name life.nd.gov or a similar domain name. The website must be distinct from the department's website and the department shall place a clear and conspicuous link to the website on the department website.

**SECTION 24. QUARTERLY BUDGET AND UTILIZATION REPORTS.** During the biennium beginning July 1, 2023, and ending June 30, 2025, the department of health and human services shall make quarterly reports available that detail the status of the department's budget and the utilization rates of programs. The reports must be made available within 30 days of the close of each quarter.

**SECTION 25. AMENDMENT.** Subsection 2 of section 12.1-04-07 of the North Dakota Century Code is amended and reenacted as follows:

2. An examination must occur within fifteen days from receipt of material necessary to examine the fitness of the individual and notice of entry of the order served upon the tier 1a mental health professional. Attorneys shall disclose any materials necessary to examine the fitness of the individual to the tier 1a examiner contemporaneously with the order. For good cause shown, the court may grant an extension allowing an additional seven days to complete the examination.

**SECTION 26. AMENDMENT.** Section 50-01.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-01.2-01. Human service zone board - Members - Qualifications.**

The board of county commissioners of each county within the human service zone shall appoint the appointed members of the human service zone board based upon fitness to serve as members by reason of character, experience, and training without regard to political affiliation. Appointed members of the human service zone board must consist of local elected officials and other key community partners, including at least one member of the legislative assembly. If a human service zone consists of two or more counties, each county must be represented on the human service zone board by only one county commissioner of that county. If a human service zone consists of a single county, the county must be represented on the human service zone board by no more than two county commissioners of that county and the human service zone board must have at least five appointed members. Appointed members shall elect a vice presiding officer and appoint a secretary, and other officers as the human service zone board determines necessary. The human service zone director shall serve as presiding officer of the human service zone board as a nonappointed member.

**SECTION 27. AMENDMENT.** Section 50-06-42 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-42. Substance use disorder treatment voucher system. (~~Retroactive application~~—[See note](#))**

1. The department shall establish and administer, within the limits of legislative appropriations, a voucher system to address underserved areas and gaps in the state's substance abuse treatment system and to assist in the payment of addiction treatment services provided by licensed substance abuse treatment programs, excluding regional human service centers, and hospital- or medical clinic-based programs for medical management of withdrawal, ~~and any institution for mental diseases in accordance with subsection 2.~~ An out-of-state licensed substance abuse treatment program located within a bordering state may participate in the voucher program to serve an underserved area of this state pursuant to the rules adopted by the department. The department shall develop rules to include processes and requirements for an out-of-state provider to receive reimbursement only for outpatient and community-based services upon a provider completing an assessment of need and receiving approval from the department.
2. ~~The department shall deny a licensed substance abuse treatment program's substance use disorder treatment voucher system application and deny reimbursement by the substance use disorder treatment voucher system if the licensed substance abuse treatment program is an institution for mental diseases and reimbursement is requested for residential beds added on or after July 1, 2020.~~
3. Services eligible for the voucher program include only those levels of care recognized by the American society of addiction medicine, with particular emphasis given to underserved areas and programs. The department shall ensure that a licensed substance abuse treatment program, hospital, and medical clinic program accepting vouchers collects and reports process and outcome measures.
- 4.3. The department shall develop requirements and provide training and technical assistance to a licensed substance abuse treatment program, hospital, and medical clinic program accepting vouchers. A licensed substance abuse treatment program, hospital, and medical clinic program accepting vouchers shall provide evidence-based services.
- 5.4. The department shall allocate funding appropriated for the substance use disorder treatment voucher as follows:
  - a. No more than forty-five percent of the appropriated amount may be allocated for residential substance use disorder services administered by licensed substance abuse treatment programs with more than sixteen beds.
  - b. The remaining appropriation must be allocated for residential programs with sixteen or fewer beds, nonresidential outpatient, and ancillary substance use disorder services administered by licensed substance abuse treatment programs.

**SECTION 28.** A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

**North Dakota legislative health care task force - Duties - Membership - Legislative management report.**

There is created a North Dakota legislative health care task force. The task force shall meet at least once each quarter and may request, obtain, review, and analyze information relating to North Dakota health care, including data, reports, audits, and other information as requested by the task force. The department of health and human services shall provide staff services for the task force. The task force shall submit a report of its activities and any recommendations to improve health care in the state to the legislative management by October first of each year. The chairman of the task force must be a member of the legislative assembly appointed by the chairman of the legislative management. The chairman of the task force may invite guests to participate in task force activities. The task force consists of the following members:

1. The chairman of the house appropriations committee human resources division, or the chairman's designee;
2. The chairman of the senate appropriations committee human resources division, or the chairman's designee;
3. The chairman of the house human services committee, or the chairman's designee;
4. The chairman of the senate human services committee, or the chairman's designee;
5. One member of the house of representatives as appointed by the house minority leader;
6. One member of the senate as appointed by the senate minority leader;
7. The commissioner of the department of health and human services, or the commissioner's designee;
8. Two members of the department of health and human services, including the state health officer and one member appointed by the commissioner of the department of health and human services;
9. One member from the governor's office, appointed by the governor;
10. The insurance commissioner, or the insurance commissioner's designee;
11. Two members to represent the North Dakota health insurance industry;
12. One member of the public, appointed by an organization that represents North Dakota businesses;
13. One member appointed by the Indian affairs commissioner to represent tribal health care;
14. One member from a North Dakota association that represents physicians;
15. Five members from a North Dakota association that represents hospitals, of which:
  - a. Two members must represent rural hospitals, including one representative of a hospital in a city with a population of ten thousand or more and one representative of a hospital in a city with a population under ten thousand;

- b. Two members must represent urban hospitals, including one representative of an independent hospital and one representative of an integrated health care system; and
- c. One member must represent a psychiatric hospital; and

16. Any other members appointed by the chairman of legislative management.

<sup>9</sup> **SECTION 29. AMENDMENT.** Section 50-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-02. Definitions. (~~Effective through June 30, 2025~~)**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Authorized agent" means the human service zone, unless another entity is designated by the department.
2. "Child care center" means an early childhood program licensed to provide early childhood services to nineteen or more children.
3. "Department" means the department of health and human services.
4. "Drop-in care" means the care of children on a one-time, occasional, or unscheduled basis to meet the short-term needs of families.
5. "Early childhood program" means any program licensed under this chapter where early childhood services are provided for at least two hours a day for three or more days a week.
6. "Early childhood services" means the care, supervision, education, or guidance of a child or children, which is provided in exchange for money, goods, or other services. 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 section 15.1-06-06.1.
  - d. Child care, preschool, and prekindergarten services provided to children under six years of age in any educational facility through a program approved by the department.
  - e. Child care provided in facilities operated in connection with a church, business, or organization where children are cared for during periods of time not exceeding four continuous hours while the child's parent is attending church services or is engaged in other activities, on the premises.

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<sup>9</sup> Section 50-11.1-02 was also amended by section 1 of Senate Bill No. 2104, chapter 435, and section 1 of Senate Bill No. 2182, chapter 434.

- 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 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. Head start and early head start programs that are federally funded and meet federal head start performance standards.
  - j. Child care provided in a medical facility by medical personnel to children who are ill.
7. "Family child care" means a private residence licensed to provide early childhood services for no more than seven children at any one time, except that the term includes a residence licensed to provide early childhood services to two additional school-age children.
  8. "Four-year old program" means an approved child care program operated by a public or private educational entity or an early childhood program designed to serve four-year olds.
  9. "Group child care" means a child care program licensed to provide early childhood services for thirty or fewer 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. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department.
  12. "In-home provider" means any person who provides early childhood services to children in the children's home.
  13. "Licensed" means an early childhood program has the rights, authority, or permission granted by the department to operate and provide early childhood services.
  14. "Multiple licensed program" means an early childhood program licensed to provide more than one type of early childhood services.
  15. "Owner" or "operator" means the person who has legal responsibility for the early childhood program and premises.
  16. "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.
  17. "Premises" means the indoor and outdoor areas approved for providing early childhood services.

18. "Preschool" means a program licensed to offer early childhood services, which follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled and which serves no child for more than three hours per day.
19. "Public approval" means a nonlicensed early childhood program operated by a government entity that has self-certified that the program complies with this chapter.
20. "Registrant" means the holder of an in-home provider registration document issued by the department in accordance with this chapter.
21. "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.
22. "Registration document" 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.
23. "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.
24. "School-age children" means children served under this chapter who are at least five years but less than twelve years of age.
25. "Self-declaration" means voluntary documentation of an individual providing early childhood services in a private residence for up to five children through the age of eleven, of which no more than three may be under the age of twenty-four months.
26. "Staff member" means an individual:
  - a. Who is an employee of an early childhood program or of an early childhood services provider under a self-declaration;
  - b. Whose activities involve the care, supervision, or guidance of children of an early childhood program; or
  - c. Who may have unsupervised access to children under the care, supervision, or guidance of an early childhood program or early childhood services provider under a self-declaration.

**Definitions. (Effective after June 30, 2025)**

As used in this chapter, unless the context or subject matter otherwise requires:

1. ~~"Authorized agent" means the human service zone, unless another entity is designated by the department.~~
2. ~~"Child care center" means an early childhood program licensed to provide early childhood services to nineteen or more children.~~
3. ~~"Department" means the department of health and human services.~~

4. ~~"Drop-in care" means the care of children on a one-time, occasional, or unscheduled basis to meet the short-term needs of families.~~
5. ~~"Early childhood program" means any program licensed under this chapter where early childhood services are provided for at least two hours a day for three or more days a week.~~
6. ~~"Early childhood services" means the care, supervision, education, or guidance of a child or children, which is provided in exchange for money, goods, or other services. 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 section 15.1-06-06.1.~~
  - d. ~~Child care, preschool, and prekindergarten services provided to children under six years of age in any educational facility through a program approved by the department.~~
  - e. ~~Child care provided in facilities operated in connection with a church, business, or organization where children are cared for during periods of time not exceeding four continuous hours while the child's parent is attending church services or is engaged in other activities, on 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 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. ~~Head start and early head start programs that are federally funded and meet federal head start performance standards.~~
  - j. ~~Child care provided in a medical facility by medical personnel to children who are ill.~~
7. ~~"Family child care" means a private residence licensed to provide early childhood services for no more than seven children at any one time, except that the term includes a residence licensed to provide early childhood services to two additional school-age children.~~
8. ~~"Group child care" means a child care program licensed to provide early childhood services for thirty or fewer children.~~

9. "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.
10. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department.
11. "In-home provider" means any person who provides early childhood services to children in the children's home.
12. "Licensed" means an early childhood program has the rights, authority, or permission granted by the department to operate and provide early childhood services.
13. "Multiple licensed program" means an early childhood program licensed to provide more than one type of early childhood services.
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" means a program licensed to offer early childhood services, which follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled and 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.
19. "Registrant" means the holder of an in-home provider registration document issued by the department in accordance with this chapter.
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.
21. "Registration document" 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. "School-age children" means children served under this chapter who are at least five years but less than twelve years of age.

24. ~~"Self-declaration" means voluntary documentation of an individual providing early childhood services in a private residence for up to five children through the age of eleven, of which no more than three may be under the age of twenty-four months.~~
25. ~~"Staff member" means an individual:~~
- ~~a. Who is an employee of an early childhood program or of an early childhood services provider under a self-declaration;~~
  - ~~b. Whose activities involve the care, supervision, or guidance of children of an early childhood program; or~~
  - ~~c. Who may have unsupervised access to children under the care, supervision, or guidance of an early childhood program or early childhood services provider under a self-declaration.~~

<sup>10</sup> **SECTION 30. AMENDMENT.** Section 50-11.1-22 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-22. Early childhood grant for best in class four-year old experiences. (Expired effective July 1, 2025)**

1. A four-year old program deemed eligible under section 50-11.1-23 may submit an application for the best in class four-year old experiences grant. An approved program is eligible for an annual award of one hundred twenty thousand dollars per approved group size. The grant award must be matched with no less than twenty thousand dollars in other funds. The department shall assign a program support coach to each approved program. An approved program:
  - a. Shall utilize the assigned support coach and utilize the sliding fee scale for parent fees, as established by the department.
  - b. May use grant funds to support the provision of quality early childhood experiences, including expenditures related to staffing, training, equipment, and supplies.
  - c. May not use grant funds for construction or rehabilitation. An approved program must enter a grant agreement with the department.
2. The department may not collect equipment or supplies purchased with grant funds from the approved program after successful completion of the term of the grant.

<sup>11</sup> **SECTION 31. AMENDMENT.** Section 50-11.1-23 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-23. Eligibility for best in class four-year old experiences grant. (Expired effective July 1, 2025)**

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<sup>10</sup> Section 50-11.1-22 was also amended by section 26 of Senate Bill No. 2104, chapter 435.

<sup>11</sup> Section 50-11.1-23 was also amended by section 27 of Senate Bill No. 2104, chapter 435.

1. A four-year old program may submit, in the form and manner prescribed by the department, an application to the department for a grant under section 50-11.1-22, if the provider certifies to the department the provider:
  - a. Operates a four-year old program in this state;
  - b. Operates a four-year old program for children who have reached four years of age before August first in the year of enrollment;
  - c. Operates a four-year old program that has a duration of at least four hundred hours over a period of at least thirty-two consecutive weeks;
  - d. Incorporates within the four-year old program at least ten hours of research-based family engagement;
  - e. Has been determined to meet the standards and expectations of no less than step three in the North Dakota early childhood quality improvement system;
  - f. Is willing to admit children of all learning abilities into the four-year old program;
  - g. Is willing to admit children who receive assistance from the child care assistance program into the four-year old program; and
  - h. Is willing to operate in compliance with the grant requirements, including:
    - (1) Maintaining the recommended group size for number of children served in the four-year old program;
    - (2) Complying with requirements related to qualifications, training, and professional development of staff delivering services in the four-year old program; and
    - (3) Adhering to expectations established by the department related to four-year old program monitoring and oversight.
2. The department may distribute grants under this section to approved four-year old programs, including four-year old programs operated as early childhood programs by educational facilities or federally funded head start programs or in connection with a church, business, or organization that operates a four-year old program.
3. The department may recapture grant funds distributed to an approved four-year old program found by the department to be out of compliance with requirements established for the best in class four-year old experiences grant program.

<sup>12</sup> **SECTION 32. AMENDMENT.** Section 50-11.1-24 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-24. Grant program data collection - Requirements. (Expired effective July 1, 2025)**

<sup>12</sup> Section 50-11.1-24 was also amended by section 28 of Senate Bill No. 2104, chapter 435.

The state agency with approval authority over four-year old programs, with the advice and consent of the department, shall implement a uniform system for the accounting, budgeting, and reporting of data by any four-year old program provider to whom or to which grants are distributed under section 50-11.1-23. Grants may be withheld or forfeited, in whole or in part, if information required in accordance with this section is not submitted at the time or in the manner requested by the state agency with approval authority over four-year old programs. A grant recipient shall consent to provide information needed to comply with data collection requirements. The state agency with approval authority over four-year old programs shall disclose the requested information to the department.

**SECTION 33.** A new subsection to section 50-24.1-07 of the North Dakota Century Code is created and enacted as follows:

In any probate proceedings in which the department has filed a claim under this section, no additional evidence of foundation may be required for the admission of the department's payment record supporting the department's claim if the payment record is certified as a true copy and bears the signature of a representative of the department. There is a rebuttable presumption that the amount of medical assistance on the claim was incurred and paid on behalf of the recipient of medical assistance and is an allowable claim.

**SECTION 34. AMENDMENT.** Section 50-24.1-26 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-26. Medicaid waivers - In-home services.**

The department shall administer Medicaid waivers to provide in-home services to children with extraordinary medical needs and to children up to the age of ~~sixteen~~eighteen diagnosed with an autism spectrum disorder who would otherwise meet institutional level of care. The department may prioritize applicants for the waiver for children with extraordinary medical needs by degree of need.

**SECTION 35. AMENDMENT.** Subsection 5 of section 50-24.1-37 of the North Dakota Century Code is amended and reenacted as follows:

5. Provider and managed care organization reimbursement rate information received or held by the department under this section is an open record.

**SECTION 36. AMENDMENT.** Section 50-24.5-02.3 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.5-02.3. Basic care payment rates.**

1. The department shall ~~establish, by rule, procedures for determining rates~~determine limits for the care of residents of basic care facilities that qualify as vendors of an aged, blind, and disabled persons program and for implementing provisions of this chapter. ~~The procedures must be based on methods and standards that the department finds are adequate to recognize the data demonstrating the most recent costs that must be incurred for the care of residents in efficiently and economically operated basic care facilities. The department shall determine the limits every four years by July first, beginning with July 1, 2023.~~
2. The department shall ~~identify costs that are recognized for establishing payment rates~~establish the limits by using the median rates from the most

recent data available. The direct care limit must be the median plus eighteen percent. The indirect care limit must be the median plus twelve percent.

3. For the rate year beginning July 1, 20162023, the department shall establish the limits by using the average of the highest and lowest rates from the 2014 rate year. The direct care limit must be ninety-five percent of the average and the indirect care limit must be ninety percent of the average. Beginning with the July 1, 2017, rate year, the department shall adjust the limits by using the cost percentage change from the prior two rate years, within the limits of legislative appropriationsincrease rates and limits three and one-half percent for inflation. For the rate year beginning July 1, 2024, the department shall increase rates and limits three and one-half percent for inflation.
4. The department shall provide, by rule, within the limits of legislative appropriations, for payment of rates paid by the aged, blind, and disabled persons program for a maximum of thirty days per occurrence for leave days for a resident who is in a licensed health care facility when the resident is expected to return to the facilityprovide a rate increase in the amount of five dollars per day for the period beginning July 1, 2023, and ending June 30, 2025, after which the increase is not effective. This rate increase may not be included in any calculation of inflation increase.
5. Within the limits of legislative appropriations, the department shall establish an uncompensated care expense of one hundred eightythree hundred sixty-five days.

**SECTION 37. 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 consistent with coverage provided to children eligible for medical assistance in the state; and
2. Must provide:
  - a. A modified adjusted gross income eligibility limit of one two hundred seventy-fiveten percent of the poverty line; and
  - b. Current eligibility may be established from the first day of the month in which the application was received. Retroactive eligibility may be established for the three calendar months that immediately preceded the month in which the application was received even if there is no eligibility in the month of application. Eligibility can be established if all factors of eligibility are met during each month.

<sup>13</sup> **SECTION 38.** Two new subsections to the new section to chapter 54-52.1 of the North Dakota Century Code as created by section 2 of Senate Bill No. 2140, as approved by the sixty-eighth legislative assembly, are created and enacted as follows:

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<sup>13</sup> Section 54-52.1-04.18 was created by section 2 of Senate Bill No. 2140, chapter 516.

If application of subsection 3 would result in the ineligibility of a health benefit plan that is a qualified high-deductible health plan to qualify as a health savings account under section 223 of the Internal Revenue Code [26 U.S.C. 223], the requirements of subsection 3 do not apply with respect to the deductible of the health benefit plan until after the enrollee has satisfied the minimum deductible under section 26 U.S.C. 223.

This section does not apply to the Medicare part D prescription drug coverage plan.

**SECTION 39. REPEAL.** Section 50-06-32.1 of the North Dakota Century Code is repealed.

**SECTION 40. BUILDING PROJECT - LEASE.** The department of health and human services is authorized to enter into agreements with vendors to build two buildings for the department to lease for the lake region human service center and northwest human service center for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 41. LEASE OF LAND - STATE HOSPITAL.** The department of health and human services and national guard may enter an agreement to lease up to twenty acres of real property associated with the state hospital for the national guard to construct a new training and storage facility.

**SECTION 42. PROVIDER PROCESS AND OUTCOME MEASURES.** Providers that receive funding from the department of health and human services shall submit process and outcome measures, as required by the department, to the department for programs and services supported by state funding during the biennium beginning July 1, 2023, and ending June 30, 2025, for the department to evaluate the administration of the programs and services using the appropriation for the program or service.

**SECTION 43. HUMAN SERVICE CENTERS - CERTIFIED COMMUNITY BEHAVIORAL HEALTH CLINICS - FULL-TIME EQUIVALENT POSITIONS - REPORT - EXEMPTION.**

1. The department of health and human services shall select at least one human service center to begin the process of becoming a certified community behavioral health clinic to provide continuous community-based behavioral health services for children and adults. The department shall pursue additional federal funding as available. Subject to the availability of generated income, the department may add full-time equivalent positions for field services to provide direct services for the period beginning with the effective date of this Act and ending June 30, 2025. The department shall report to the office of management and budget and legislative council each time a position is added.
2. The department may consider the inclusion of providers of integrated, wraparound crisis services to young adults, who are at risk of being homeless or experiencing serious adverse life events, into the creation of any certified community behavioral health clinic.
3. The \$15,000,000 from the general fund appropriated to the department of health and human services for the substance use disorder treatment voucher system in chapter 12 of the 2021 Session Laws is not subject to the provisions

of section 54-44.1-11, and any unexpended funds of up to \$4,150,000 from this appropriation may be continued and spent for defraying the expenses of additional human service centers to begin the process of becoming a certified community behavioral health clinic to provide continuous community-based behavioral health services for children and adults during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 44. EXEMPTION - UNEXPENDED APPROPRIATIONS.** The following appropriations are not subject to the provisions of section 54-44.1-11 and may be continued into the biennium beginning July 1, 2023, and ending June 30, 2025:

1. The sum of \$750,000 appropriated from the general fund for suicide prevention grants in chapter 37 of the 2019 Session Laws;
2. The sum of \$1,776,000 appropriated from the strategic investment and improvements fund and the sum of \$5,328,000 appropriated from federal funds for the Medicaid management information system technology stack upgrade in chapter 37 of the 2019 Session Laws;
3. The sum of \$600,000 appropriated from the general fund and the sum of \$1,800,000 appropriated from federal funds for the Medicaid management information system technology stack upgrade in chapter 12 of the 2021 Session Laws;
4. The sum of \$4,326,686 appropriated from the general fund and the sum of \$30,673,314 appropriated from federal funds for the Medicaid management information system modularization technology project in chapter 12 of the 2021 Session Laws;
5. Any amounts appropriated to the department of health and human services in chapter 549 of the 2021 Special Session Session Laws;
6. Any amounts appropriated to the department of health and human services in chapter 550 of the 2021 Special Session Session Laws;
7. Any amounts appropriated to the department of health and human services for COVID-19 relief in chapters 27 and 28 of the 2021 Session Laws;
8. The amount appropriated for the modification of the department of human services' eligibility systems in chapter 578 of the 2011 Special Session Session Laws which was continued into the 2013-15 biennium, then the 2015-17 biennium, then the 2017-19 biennium, then the 2019-21 biennium, and then 2021-23 biennium;
9. The sum of \$2,000,000 appropriated for substance use disorder voucher system grants in chapter 12 of the 2021 Session Laws which may be continued and spent pursuant to section 50-06-42.1;
10. The sum of \$175,000 for home and community-based services housing assistance in chapter 12 of the 2021 Session Laws; and
11. The sum of \$15,000,000 appropriated from the general fund and the sum of \$15,000,000 appropriated from federal funds for the child welfare technology project in chapter 12 of the 2021 Session Laws.

**SECTION 45. EXEMPTION - EARLY CHILDHOOD INFORMATION SYSTEM.**

The requirements of chapter 54-44.4 do not apply to the selection of a vendor, the procurement award, or payments made under this section regarding an early childhood workforce and professional development information system or an early childhood resource and referral information system for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 46. EXEMPTION - PURCHASE OF CONSUMABLES.**

The requirements of chapter 54-44.4 do not apply to the purchase of consumables at the department of health and human services continuously staffed residential units during low-census time periods for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 47. LEGISLATIVE INTENT - UTILIZATION RATE ADJUSTMENT.**

It is the intent of the sixty-eighth legislative assembly that the department of health and human services seeks a deficiency appropriation from the sixty-ninth legislative assembly for any expenditures that exceed appropriated amounts as a result of underfunding, utilization rates, discontinuation of the federal Medicaid continuous enrollment requirement, value-based purchasing for nursing facilities, reduction in federal medical assistance percentage, and unexpected contract cost increases that exceed ten percent, during the biennium beginning July 1, 2023, and ending June 30, 2025, if funding is not sufficient to pay actual expenses.

**SECTION 48. LEGISLATIVE INTENT - PROVIDER RATE INCREASE.**

Except as otherwise noted, section 1 of this Act includes funding for human service provider inflation increases of two percent for each year of the biennium beginning July 1, 2023, and ending June 30, 2025. Section 1 of this Act includes funding for developmental disability service payment inflation increases of three percent each year of the biennium beginning July 1, 2023, and ending June 30, 2025. The provider inflation increase in this section does not apply to nursing and basic care facilities or prospective payment system hospitals that have different inflation rates.

**SECTION 49. DEVELOPMENTAL DISABILITY PROVIDER ADJUSTMENT.**

Subdivision 2 of section 1 of this Act includes funding for developmental disability provider rate adjustments. Adjustments must provide for the equivalent of a one dollar per hour increase for direct care staff and the equivalent of a one dollar per hour increase for indirect program support staff of licensed developmental disability providers. Developmental disability providers shall provide a report to the department of health and human services as determined by the department. The increase to direct care staff and related indirect program support staff does not apply to qualified service provider rates as established under the long-term care program.

**SECTION 50. FEDERAL FUNDING APPEAL LIMITATION.**

Except as otherwise specifically provided by federal law, a person may not appeal a denial, revocation, reduction in services or payment, or the termination of a program or service by the department of health and human services due to the unavailability of federal coronavirus funding received under federal law resulting from the federal coronavirus pandemic emergency declaration for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 51. LEGISLATIVE MANAGEMENT STUDY - EARLY CHILDHOOD PROGRAMS AND SERVICES.**

During the 2023-24 interim, the legislative management shall consider studying the early child care programs and child care services to identify major needs and systemic approaches to stabilize child care infrastructure. The legislative management shall report its findings and

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

**SECTION 52. LEGISLATIVE MANAGEMENT STUDY - SOCIAL WORK LICENSURE COMPACT.** During the 2023-24 interim, the legislative management shall consider studying the feasibility and desirability of the legislative assembly enacting the social work licensure compact. The study may include consideration of whether the public and the social work community support enactment and whether the North Dakota board of social work examiners has the capacity to participate in the compact. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 53. LEGISLATIVE MANAGEMENT STUDY - MEDICAID PROVIDER REIMBURSEMENT ARRANGEMENTS.** During the 2023-24 interim, the legislative management shall study the benefits of basing provider reimbursement rates for the Medicaid program in accordance with a provider's performance under established and accepted value-based care metrics. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 54. LEGISLATIVE MANAGEMENT STUDY - INTERMEDIATE CARE FACILITY RATE FORMULA.** During the 2023-24 interim, the legislative management shall consider studying the payment rates for intermediate care facilities, including options to increase the rates. The study must consider the funded percentage of costs for services including day and small group care, individual employment, in-home supports, respite care, habilitative care, independent habitation, and residential habitation. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 55. SUPREME COURT STUDY - WELLNESS COURT - REPORT TO LEGISLATIVE MANAGEMENT.** During the 2023-24 interim, the supreme court, in consultation with the department of corrections and rehabilitation, the department of health and human services, and the attorney general, shall study and identify those provisions of the North Dakota Century Code which pertain to drug court and assess whether the term wellness court should be adopted to replace drug court. The supreme court shall report its findings and recommendations, together with any legislation required to implement the statutory change of drug court to wellness court, to the legislative management by June 1, 2024.

**SECTION 56. LEGISLATIVE MANAGEMENT REPORT - EARLY CHILDHOOD PROGRAMS.** During the 2023-24 interim, the department of health and human services shall provide reports to the legislative management regarding the status of early childhood programs managed by the department.

**SECTION 57. EFFECTIVE DATE.** Section 39 of this Act becomes effective on January 1, 2024; Senate Bill No. 2181, as approved by the sixty-eighth legislative assembly, becomes effective on October 1, 2023; and section 2 of Senate Bill No. 2276, as approved by the sixty-eighth legislative assembly, becomes effective on April 1, 2024.

**SECTION 58. EMERGENCY.** Section 4 of this Act is declared to be an emergency measure.

Approved May 9, 2023

Filed May 10, 2023

## CHAPTER 45

### SENATE BILL NO. 2013

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of public instruction, the center for distance education, the state library, the school for the deaf, and North Dakota vision services - school for the blind; to amend and reenact sections 15.1-02-02, 15.1-27-04.1, 15.1-32-01, 15.1-32-14, 15.1-32-18, and 54-24.3-01 of the North Dakota Century Code, relating to the salary of the superintendent of public instruction, baseline funding, high-cost students, and regional library cooperative definitions; to provide for a transfer; to provide for reports; to provide an exemption; 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 department of public instruction, the center for distance education, the state library, the school for the deaf, and North Dakota vision services - school for the blind for the purpose of defraying the expenses of those agencies, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

Subdivision 1.

#### DEPARTMENT OF PUBLIC INSTRUCTION

			Adjustments or
	<u>Appropriation</u>	<u>Base Level</u>	<u>Enhancements</u>
Salaries and wages	\$17,854,747	\$965,839	\$18,820,586
Operating expenses	33,098,149	(304,829)	32,793,320
Integrated formula payments	2,131,825,000	164,849,851	2,296,674,851
Grants - special education	27,000,000	(3,000,000)	24,000,000
Grants - transportation	58,100,000	0	58,100,000
Grants - other grants	312,738,893	70,000,000	382,738,893
Grants - program grants	0	13,550,000	13,550,000
Grants - passthrough grants	0	8,569,000	8,569,000
Grants - program and passthrough	10,387,064	(10,387,064)	0
PowerSchool	5,250,000	525,000	5,775,000
National board certification	176,290	0	176,290
Total all funds	\$2,596,430,143	\$244,767,797	\$2,841,197,940
Less estimated income	938,233,270	187,349,226	1,125,582,496
Total general fund	\$1,658,196,873	\$57,418,571	\$1,715,615,444
Full-time equivalent positions	86.25	0.00	86.25

Subdivision 2.

## CENTER FOR DISTANCE EDUCATION

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Center for distance education	\$0	\$11,347,980	\$11,347,980
Total all funds	\$0	\$11,347,980	\$11,347,980
Less estimated income	0	4,550,000	4,550,000
Total general fund	\$0	\$6,797,980	\$6,797,980
Full-time equivalent positions	0.00	30.80	30.80

Subdivision 3.

## STATE LIBRARY

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$4,139,907	\$295,408	\$4,435,315
Operating expenses	1,822,703	752,595	2,575,298
Grants	2,233,528	50,000	2,283,528
Total all funds	\$8,196,138	\$1,098,003	\$9,294,141
Less estimated income	2,364,417	107,626	2,472,043
Total general fund	\$5,831,721	\$990,377	\$6,822,098
Full-time equivalent positions	26.75	0.00	26.75

Subdivision 4.

## SCHOOL FOR THE DEAF

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$8,332,820	\$604,780	\$8,937,600
Operating expenses	1,705,586	120,171	1,825,757
Capital assets	158,678	843,500	1,002,178
Total all funds	\$10,197,084	\$1,568,451	\$11,765,535
Less estimated income	2,790,528	875,163	3,665,691
Total general fund	\$7,406,556	\$693,288	\$8,099,844
Full-time equivalent positions	44.61	0.75	45.36

Subdivision 5.

## NORTH DAKOTA VISION SERVICES - SCHOOL FOR THE BLIND

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$4,992,194	\$354,219	\$5,346,413
Operating expenses	792,671	103,015	895,686
Capital assets	39,192	439,000	478,192
Total all funds	\$5,824,057	\$896,234	\$6,720,291
Less estimated income	1,062,178	598,533	1,660,711
Total general fund	\$4,761,879	\$297,701	\$5,059,580
Full-time equivalent positions	27.75	0.00	27.75

Subdivision 6.

## TOTAL - SECTION 1

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$1,676,197,029	\$66,197,917	\$1,742,394,946
Grand total special funds	<u>944,450,393</u>	<u>193,480,548</u>	<u>1,137,930,941</u>
Grand total all funds	\$2,620,647,422	\$259,678,465	\$2,880,325,887

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Department of public instruction		
Science experiments grants	\$13,500,000	\$5,500,000
Regional education association grants	250,000	70,000
State automated reporting system maintenance	200,000	0
Children's science center	5,900,000	0
State automated reporting system and statewide longitudinal data system upgrades	10,100,000	0
Elementary and secondary school emergency education relief	305,266,879	0
Emergency education relief homeless children and youth program	1,999,661	0
Assistance to nonpublic schools	4,151,371	0
Individuals with Disabilities Education Act grant	8,632,569	0
School board training grants	0	1,500,000
Statewide reading tool	0	1,600,000
Statewide teacher retention program	<u>0</u>	<u>2,300,000</u>
Total department of public instruction - all funds	\$350,000,480	\$10,970,000
Total department of public instruction - estimated income	<u>349,800,480</u>	<u>10,900,000</u>
Total department of public instruction - general fund	\$200,000	\$70,000
State library		
COVID-19 salaries and wages	\$86,669	\$0
COVID-19 operating expenses	1,580,057	0
COVID-19 grants	500,000	0
Retirement leave payouts	0	40,000
Maintenance of effort	0	100,000
IT equipment	0	43,000
Building renovations	<u>0</u>	<u>150,000</u>
Total state library - all funds	\$2,166,726	\$333,000
Total state library - estimated income	<u>2,166,726</u>	<u>0</u>
Total state library - general fund	\$0	\$333,000
School for the deaf		
Campus server upgrade	\$7,500	\$0
Operating expenses	21,500	0
Equipment	40,000	43,500
Boiler and resource center projects	650,000	0
Operating expense inflation	0	120,171
Boiler replacement	0	650,000
Fire alarm and controls	<u>0</u>	<u>150,000</u>
Total school for the deaf - all funds	\$719,000	\$963,671
Total school for the deaf - estimated income	<u>719,000</u>	<u>873,586</u>

Total school for the deaf - general fund	\$0	\$90,085
North Dakota vision services - school for the blind		
Vision screening devices	\$11,500	\$0
Replace flooring	10,000	0
Replace south wing air conditioning	40,000	0
Repair sidewalk, roof, and parking lot	24,000	0
Replace doors and key system	45,000	0
Heating, ventilation, and air conditioning upgrades	86,000	0
Install LED lighting	33,000	0
South wing electrical service	165,000	0
Equipment	0	26,000
Repairs and maintenance	0	439,000
Total school for the blind - estimated income	\$414,500	\$465,000
Grand total - all funds	\$353,300,706	\$12,731,671
Grand total - estimated income	<u>353,100,706</u>	<u>12,238,586</u>
Grand total - general fund	\$200,000	\$493,085

The 2023-25 biennium one-time funding amounts are not part of the entity's base budget for the 2025-27 biennium. The department of public instruction, state library, school for the deaf, and North Dakota vision services - school for the blind shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. APPROPRIATION - TUITION APPORTIONMENT.** The sum of \$510,860,000, included in the integrated formula payments line item in subdivision 1 of section 1 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, 2023, and ending June 30, 2025.

**SECTION 4. ESTIMATED INCOME - FOUNDATION AID STABILIZATION FUND.** The estimated income line item in subdivision 1 of section 1 of this Act includes the sum of \$157,000,000 from the foundation aid stabilization fund for integrated formula payments.

**SECTION 5. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND.** The estimated income line item in subdivision 1 of section 1 of this Act includes the sum of \$19,493,086 from the strategic investment and improvements fund for integrated formula payments and certain passthrough grants.

**SECTION 6. INTEGRATED FORMULA PAYMENTS AND SPECIAL EDUCATION CONTRACTS EXPENDITURE AUTHORITY.** The superintendent of public instruction may expend funds included in the integrated formula payments and grants - special education contracts line items in subdivision 1 of section 1 of this Act for paying grants for educational services that were due in the 2021-23 biennium but which were not filed, claimed, or properly supported by the education provider until after June 30, 2023. To be reimbursed under this section, claims must be properly supported and filed with the superintendent of public instruction by June 30, 2024.

**SECTION 7. GIFTED AND TALENTED PROGRAM.** The sum of \$800,000, included in the integrated formula payments 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.

**SECTION 8. MEDICAID MATCHING FUNDING AND SCHOOL APPROVAL - WITHHOLDING AND DISTRIBUTION.**

1. 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 for the biennium beginning July 1, 2023, and ending June 30, 2025. 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 health and human services on behalf of the school district or unit.
2. State school aid payments for integrated formula payments must be reduced by the amount of funds required to be paid by school districts for school approval for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 9. REGIONAL EDUCATION ASSOCIATION MERGER GRANTS - ONE-TIME FUNDING - DISTRIBUTION.** The grants - program grants line item included in subdivision 1 of section 1 of this Act includes \$70,000 from the general fund for the purpose of providing a one-time \$35,000 grant to each regional education association that merges with another regional education association to form a single entity with a single governing board during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 10. REGIONAL EDUCATION ASSOCIATIONS - GRANTS - DISTRIBUTION.** The integrated formula payments line item in subdivision 1 of section 1 of this Act includes \$700,000 from the general fund for the purpose of providing annual grants to regional education associations for the biennium beginning July 1, 2023, and ending June 30, 2025. An annual grant of \$50,000 is provided to each regional education association that exists as of July 1, 2023. Regional education associations that merge during the 2023-25 biennium are entitled to the annual grants that would have been paid to each of the member associations.

**SECTION 11. USE OF NEW MONEY - NONADMINISTRATIVE PERSONNEL COMPENSATION INCREASES.**

1. During the 2023-25 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, resulting from increases in the base integrated formula payment rate, to increase the compensation and benefits paid to nonadministrative personnel.
2. For purposes of this section, the superintendent of public instruction shall provide guidance to school districts regarding the calculation of the amount of new money resulting from increases in the base integrated formula payment rate during the 2023-25 biennium.

**SECTION 12. EXEMPTION - INDIRECT COST RECOVERIES, GENERAL EDUCATIONAL DEVELOPMENT FEES, AND DISPLACED HOMEMAKER DEPOSITS.** Notwithstanding section 54-44.1-15, the department of public instruction may deposit indirect cost recoveries in its operating account. In addition, any moneys collected by the department of public instruction for general educational development fees and displaced homemakers deposits must be deposited in the public instruction

fund in the state treasury. Any funds deposited in the public instruction fund may only be spent subject to appropriation by the legislative assembly.

**SECTION 13. EXEMPTION - TRANSFER - PUBLIC INSTRUCTION FUND - TRANSFER - GENERAL FUND.** Notwithstanding section 54-44.1-11, if, after the superintendent of public instruction complies with all statutory payment obligations imposed for the 2021-23 biennium, from any moneys remaining in the integrated formula payments line item in subdivision 1 of section 1 of chapter 13 of the 2021 Session Laws, the lesser of \$16,549,000 or the remaining amount must be continued into the 2023-25 biennium and the office of management and budget shall transfer this amount into the public instruction fund for the purpose of providing program and passthrough grants as appropriated in subdivision 1 of section 1 of this Act. The superintendent of public instruction shall transfer any of these funds remaining unspent at the end of the 2023-25 biennium to the general fund.

**SECTION 14. EXEMPTION - UNEXPENDED APPROPRIATIONS.** The following appropriations are not subject to the provisions of section 54-44.1-11 and may be continued into the biennium beginning July 1, 2023, and ending June 30, 2025:

1. Any funds remaining from federal funds derived from the elementary and secondary school emergency education relief fund and any other federal funds appropriated in subdivision 2 of section 2 of chapter 28 of the 2021 Session Laws; and
2. Any funds remaining from federal funds appropriated in subsection 2 of section 6 of chapter 15 of the 2021 Session Laws, as amended in section 1 of chapter 548 of the 2021 Special Session Session Laws.

**SECTION 15. EXEMPTION - UNEXPENDED STATE AUTOMATED REPORTING SYSTEM AND STATEWIDE LONGITUDINAL DATA SYSTEM UPGRADE APPROPRIATION - TRANSFER.** The sum of \$10,000,000 of special funds from the public instruction fund in the state treasury, derived from reimbursements withheld from school districts' integrated formula payments for the purpose of information technology project upgrades to the state automated reporting system and the statewide longitudinal data system, appropriated to the department of public instruction in section 17 of chapter 549 of the 2021 Special Session Session Laws, is not subject to the provisions of section 54-44.1-11 and any unexpended funds from this one-time appropriation may be continued and are available for information technology project upgrades to the state automated reporting system and the statewide longitudinal data system during the biennium beginning July 1, 2023, and ending June 30, 2025. The department of public instruction shall transfer any funds continued in excess of \$5,000,000 to the information technology department for statewide longitudinal data system upgrades.

**SECTION 16. STATE AID TO PUBLIC LIBRARIES.** The grants line item in subdivision 3 of section 1 of this Act includes \$1,737,582 for aid to public libraries, of which no more than one-half may be expended during the fiscal year ending June 30, 2024.

**SECTION 17. 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 one hundred ~~twenty-seven thousand seven hundred sixty-eight~~ thirty-eight thousand one hundred

~~forty-two~~ dollars through June 30, ~~2022~~2024, and one hundred ~~thirty thousand three hundred twenty-three~~forty-three thousand six hundred ~~sixty-eight~~ dollars thereafter.

<sup>14</sup> **SECTION 18. AMENDMENT.** Section 15.1-27-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-04.1. Baseline funding - Establishment - Determination of state aid. (Effective through June 30, 2025)**

1. To determine the amount of state aid payable to each district, the superintendent of public instruction shall establish each district's baseline funding. A district's baseline funding consists of:
  - a. All state aid received by the district in accordance with chapter 15.1-27 during the 2018-19 school year;
  - b. An amount equal to the property tax deducted by the superintendent of public instruction to determine the 2018-19 state aid payment;
  - c. An amount equal to seventy-five percent of the revenue received by the school district during the 2017-18 school year for the following revenue types:
    - (1) Revenue 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;
    - (2) Mineral revenue received by the school district through direct allocation from the state treasurer and not 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;
    - (3) Tuition 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, with the exception of revenue received specifically for the operation of an educational program provided at a residential treatment facility, tuition received for the provision of an adult farm management program, and beginning in the 2021-22 school year, seventeen percent of tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid, and an additional seventeen percent of tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid each school year thereafter, until the 2024-25 school year when sixty-eight percent of tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid must be excluded from the tuition calculation under this paragraph;

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<sup>14</sup> Section 15.1-27-04.1 was also amended by section 25 of Senate Bill No. 2015, chapter 47, and section 10 of Senate Bill No. 2284, chapter 173.

- (4) Revenue from payments in lieu of taxes on the distribution and transmission of electric power;
    - (5) Revenue from payments in lieu of taxes on electricity generated from sources other than coal; and
    - (6) Revenue from the leasing of land acquired by the United States for which compensation is allocated to the state under 33 U.S.C. 701(c) (3);
  - d. An amount equal to the total revenue received by the school district during the 2017-18 school year for the following revenue types:
    - (1) Mobile home tax revenue;
    - (2) Telecommunications tax revenue; and
    - (3) Revenue from payments in lieu of taxes and state reimbursement of the homestead credit and disabled veterans credit; and
  - e. Beginning with the 2020-21 school year, the superintendent shall reduce the baseline funding for any school district that becomes an elementary district pursuant to section 15.1-07-27 after the 2012-13 school year. The reduction must be proportional to the number of weighted student units in the grades that are offered through another school district relative to the total number of weighted student units the school district offered in the year before the school district became an elementary district. The reduced baseline funding applies to the calculation of state aid for the first school year in which the school district becomes an elementary district and for each year thereafter. For districts that become an elementary district prior to the 2020-21 school year, the superintendent shall use the reduced baseline funding to calculate state aid for the 2020-21 school year and for each year thereafter.
2.
  - a. The superintendent shall divide the district's baseline funding determined in subsection 1 by the district's 2017-18 weighted student units to determine the district's baseline funding per weighted student unit.
  - b. For any school district that becomes an elementary district pursuant to section 15.1-07-27 after the 2017-18 school year, the superintendent shall adjust the district's baseline funding per weighted student unit used to calculate state aid. The superintendent shall divide the district's baseline funding determined in subsection 1 by the district's weighted student units after the school district becomes an elementary district to determine the district's adjusted baseline funding per weighted student unit. The superintendent shall use the district's adjusted baseline funding per weighted student unit in the calculation of state aid for the first school year in which the school district becomes an elementary district and for each year thereafter.
  - c. Beginning with the 2021-22 school year and for each school year thereafter, the superintendent shall reduce the district's baseline funding per weighted student unit. Each year the superintendent shall calculate the amount by which the district's baseline funding per weighted student unit exceeds the payment per weighted student unit provided in subsection 3.

The superintendent shall reduce the district's baseline funding per weighted student unit by fifteen percent of the amount by which the district's baseline funding per weighted student unit exceeds the payment per weighted student unit for the 2021-22 school year. For each year thereafter, the reduction percentage is increased by an additional fifteen percent. However, the district's baseline funding per weighted student unit, after the reduction, may not be less than the payment per weighted student unit provided in subsection 3.

3. a. For the 2021-22 school year, the superintendent shall calculate state aid as the greater of:
  - (1) The district's weighted student units multiplied by ten thousand one hundred thirty-six dollars;
  - (2) One hundred two percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units, not to exceed the district's 2017-18 baseline weighted student units, plus any weighted student units in excess of the 2017-18 baseline weighted student units multiplied by ten thousand one hundred thirty-six dollars; or
  - (3) The district's baseline funding as established in subsection 1 less the amount in paragraph 1, with the difference reduced by fifteen percent and then the difference added to the amount determined in paragraph 1.
- b. For the 2022-23 school year and each school year thereafter, the superintendent shall calculate state aid as the greater of:
  - (1) The district's weighted student units multiplied by ten thousand two hundred thirty-seven dollars;
  - (2) One hundred two percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units, not to exceed the district's 2017-18 baseline weighted student units, plus any weighted student units in excess of the 2017-18 baseline weighted student units multiplied by ten thousand two hundred thirty-seven dollars; or
  - (3) The district's baseline funding as established in subsection 1 less the amount in paragraph 1, with the difference reduced by thirty percent for the 2022-23 school year and the reduction percentage increasing by fifteen percent each school year thereafter until the difference is reduced to zero, and then the difference added to the amount determined in paragraph 1.
- c. The superintendent also shall adjust state aid determined in this subsection to ensure the amount does not exceed the transition maximum as follows:
  - (1) For the 2021-22 school year, the transition maximum rate is one hundred ten percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units from the previous school year.

- (2) For the 2022-23 school year, the transition maximum rate is one hundred ten percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units from the previous school year.
  - (3) For the 2023-24 school year, the transition maximum rate is one hundred ten percent of the district's baseline funding per weighted student unit, as established in subsection 2, plus twenty percent of the difference between the rate under paragraph 1 of subdivision b of this subsection and one hundred ten percent of the district's baseline funding per weighted student unit. The transition maximum is determined by multiplying the transition maximum rate, which may not exceed the rate under paragraph 1 of subdivision b of this subsection, by the district's weighted student units from the previous school year.
  - (4) For the 2024-25 school year, the transition maximum rate is one hundred ten percent of the district's baseline funding per weighted student unit, as established in subsection 2, plus forty percent of the difference between the rate under paragraph 1 of subdivision b of this subsection and one hundred ten percent of the district's baseline funding per weighted student unit. The transition maximum is determined by multiplying the transition maximum rate, which may not exceed the rate under paragraph 1 of subdivision b of this subsection, by the district's weighted student units from the previous school year.
  - (5) For the 2025-26 school year, the transition maximum rate is one hundred ten percent of the district's baseline funding per weighted student unit, as established in subsection 2, plus sixty percent of the difference between the rate under paragraph 1 of subdivision b of this subsection and one hundred ten percent of the district's baseline funding per weighted student unit. The transition maximum is determined by multiplying the transition maximum rate, which may not exceed the rate under paragraph 1 of subdivision b of this subsection, by the district's weighted student units from the previous school year.
  - (6) For the 2026-27 school year, the transition maximum rate is one hundred ten percent of the district's baseline funding per weighted student unit, as established in subsection 2, plus eighty percent of the difference between the rate under paragraph 1 of subdivision b of this subsection and one hundred ten percent of the district's baseline funding per weighted student unit. The transition maximum is determined by multiplying the transition maximum rate, which may not exceed the rate under paragraph 1 of subdivision b of this subsection, by the district's weighted student units from the previous school year.
4. After determining the product in accordance with subsection 3, the superintendent of public instruction shall:
    - a. Subtract an amount equal to sixty mills multiplied by the taxable valuation of the school district, except the amount in dollars subtracted for purposes of this subdivision may not exceed the previous year's amount in dollars subtracted for purposes of this subdivision by more than twelve percent, adjusted pursuant to section 15.1-27-04.3; and

- b. Subtract an amount equal to seventy-five percent of all revenue types listed in subdivisions c and d of subsection 1. Before determining the deduction for seventy-five percent of all revenue types, the superintendent of public instruction shall adjust revenues as follows:
  - (1) Tuition revenue shall be adjusted as follows:
    - (a) In addition to deducting tuition revenue received specifically for the operation of an educational program provided at a residential treatment facility, tuition revenue received for the provision of an adult farm management program, tuition received for the education of high-cost and special education students, and tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid as directed each school year in paragraph 3 of subdivision c of subsection 1, the superintendent of public instruction also shall reduce the total tuition reported by the school district by the amount of tuition revenue received for the education of students not residing in the state and for which the state has not entered a cross-border education contract; and
    - (b) The superintendent of public instruction also shall reduce the total tuition reported by admitting school districts meeting the requirements of subdivision e of subsection 2 of section 15.1-29-12 by the amount of tuition revenue received for the education of students residing in an adjacent school district.
  - (2) After adjusting tuition revenue as provided in paragraph 1, the superintendent shall reduce all remaining revenues from all revenue types by the percentage of mills levied in 2020 by the school district for sinking and interest relative to the total mills levied in 2020 by the school district for all purposes.
5. The amount remaining after the computation required under subsection 4 is the amount of state aid to which a school district is entitled, subject to any other statutory requirements or limitations.
6. On or before June thirtieth of each year, the school board shall certify to the superintendent of public instruction the final average daily membership for the current school year.
7. For purposes of the calculation in subsection 4, each county auditor, in collaboration with the school districts, shall report the following to the superintendent of public instruction on an annual basis:
  - a. The amount of revenue received by each school district in the county during the previous school year for each type of revenue identified in subdivisions c and d of subsection 1;
  - b. The total number of mills levied in the previous calendar year by each school district for all purposes; and
  - c. The number of mills levied in the previous calendar year by each school district for sinking and interest fund purposes.

**Baseline funding - Establishment - Determination of state aid. (Effective after June 30, 2025)**

1. To determine the amount of state aid payable to each district, the superintendent of public instruction shall establish each district's baseline funding. A district's baseline funding consists of:
  - a. All state aid received by the district in accordance with chapter 15.1-27 during the 2018-19 school year;
  - b. An amount equal to the property tax deducted by the superintendent of public instruction to determine the 2018-19 state aid payment;
  - c. An amount equal to seventy-five percent of the revenue received by the school district during the 2017-18 school year for the following revenue types:
    - (1) Revenue 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;
    - (2) Mineral revenue received by the school district through direct allocation from the state treasurer and not 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;
    - (3) Tuition 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, with the exception of revenue received specifically for the operation of an educational program provided at a residential treatment facility, tuition received for the provision of an adult farm management program, and beginning in the 2025-26 school year, eighty-five percent of tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid, until the 2026-27 school year, and each school year thereafter, when all tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid must be excluded from the tuition calculation under this paragraph;
    - (4) Revenue from payments in lieu of taxes on the distribution and transmission of electric power;
    - (5) Revenue from payments in lieu of taxes on electricity generated from sources other than coal; and
    - (6) Revenue from the leasing of land acquired by the United States for which compensation is allocated to the state under 33 U.S.C. 701(c) (3); and
  - d. An amount equal to the total revenue received by the school district during the 2017-18 school year for the following revenue types:

- (1) Mobile home tax revenue;
  - (2) Telecommunications tax revenue; and
  - (3) Revenue from payments in lieu of taxes and state reimbursement of the homestead credit and disabled veterans credit.
- e. Beginning with the 2020-21 school year, the superintendent shall reduce the baseline funding for any school district that becomes an elementary district pursuant to section 15.1-07-27 after the 2012-13 school year. The reduction must be proportional to the number of weighted student units in the grades that are offered through another school district relative to the total number of weighted student units the school district offered in the year before the school district became an elementary district. The reduced baseline funding applies to the calculation of state aid for the first school year in which the school district becomes an elementary district and for each year thereafter. For districts that become an elementary district prior to the 2020-21 school year, the superintendent shall use the reduced baseline funding to calculate state aid for the 2020-21 school year and for each year thereafter.
2. a. The superintendent shall divide the district's baseline funding determined in subsection 1 by the district's 2017-18 weighted student units to determine the district's baseline funding per weighted student unit.
  - b. For any school district that becomes an elementary district pursuant to section 15.1-07-27 after the 2017-18 school year, the superintendent shall adjust the district's baseline funding per weighted student unit used to calculate state aid. The superintendent shall divide the district's baseline funding determined in subsection 1 by the district's weighted student units after the school district becomes an elementary district to determine the district's adjusted baseline funding per weighted student unit. The superintendent shall use the district's adjusted baseline funding per weighted student unit in the calculation of state aid for the first school year in which the school district becomes an elementary district and for each year thereafter.
  - c. Beginning with the 2021-22 school year and for each school year thereafter, the superintendent shall reduce the district's baseline funding per weighted student unit. Each year the superintendent shall calculate the amount by which the district's baseline funding per weighted student unit exceeds the payment per weighted student unit provided in subsection 3. The superintendent shall reduce the district's baseline funding per weighted student unit by fifteen percent of the amount by which the district's baseline funding per weighted student unit exceeds the payment per weighted student unit for the 2021-22 school year. For each year thereafter, the reduction percentage is increased by an additional fifteen percent. However, the district's baseline funding per weighted student unit, after the reduction, may not be less than the payment per weighted student unit provided in subsection 3.
3. a. For the 2021-22 school year, the superintendent shall calculate state aid as the greater of:

- (1) The district's weighted student units multiplied by ten thousand one hundred thirty-six dollars;
  - (2) One hundred two percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units, not to exceed the district's 2017-18 baseline weighted student units, plus any weighted student units in excess of the 2017-18 baseline weighted student units multiplied by ten thousand one hundred thirty-six dollars; or
  - (3) The district's baseline funding as established in subsection 1 less the amount in paragraph 1, with the difference reduced by fifteen percent and then the difference added to the amount determined in paragraph 1.
- b. For the 2022-23 school year and each school year thereafter, the superintendent shall calculate state aid as the greater of:
- (1) The district's weighted student units multiplied by ten thousand two hundred thirty-seven dollars;
  - (2) One hundred two percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units, not to exceed the district's 2017-18 baseline weighted student units, plus any weighted student units in excess of the 2017-18 baseline weighted student units multiplied by ten thousand two hundred thirty-seven dollars; or
  - (3) The district's baseline funding as established in subsection 1 less the amount in paragraph 1, with the difference reduced by thirty percent for the 2022-23 school year and the reduction percentage increasing by fifteen percent each school year thereafter until the difference is reduced to zero, and then the difference added to the amount determined in paragraph 1.
- c. The superintendent also shall adjust state aid determined in this subsection to ensure the amount does not exceed the transition maximum as follows:
- (1) For the 2021-22 school year, the transition maximum rate is one hundred ten percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units from the previous school year.
  - (2) For the 2022-23 school year, the transition maximum rate is one hundred ten percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units from the previous school year.
  - (3) For the 2023-24 school year, the transition maximum rate is one hundred ten percent of the district's baseline funding per weighted student unit, as established in subsection 2, plus twenty percent of the difference between the rate under paragraph 1 of subdivision b of this subsection and one hundred ten percent of the district's baseline funding per weighted student unit. The transition maximum is

determined by multiplying the transition maximum rate, which may not exceed the rate under paragraph 1 of subdivision b of this subsection, by the district's weighted student units from the previous school year.

- (4) For the 2024-25 school year, the transition maximum rate is one hundred ten percent of the district's baseline funding per weighted student unit, as established in subsection 2, plus forty percent of the difference between the rate under paragraph 1 of subdivision b of this subsection and one hundred ten percent of the district's baseline funding per weighted student unit. The transition maximum is determined by multiplying the transition maximum rate, which may not exceed the rate under paragraph 1 of subdivision b of this subsection, by the district's weighted student units from the previous school year.
  - (5) For the 2025-26 school year, the transition maximum rate is one hundred ten percent of the district's baseline funding per weighted student unit, as established in subsection 2, plus sixty percent of the difference between the rate under paragraph 1 of subdivision b of this subsection and one hundred ten percent of the district's baseline funding per weighted student unit. The transition maximum is determined by multiplying the transition maximum rate, which may not exceed the rate under paragraph 1 of subdivision b of this subsection, by the district's weighted student units from the previous school year.
  - (6) For the 2026-27 school year, the transition maximum rate is one hundred ten percent of the district's baseline funding per weighted student unit, as established in subsection 2, plus eighty percent of the difference between the rate under paragraph 1 of subdivision b of this subsection and one hundred ten percent of the district's baseline funding per weighted student unit. The transition maximum is determined by multiplying the transition maximum rate, which may not exceed the rate under paragraph 1 of subdivision b of this subsection, by the district's weighted student units from the previous school year.
4. After determining the product in accordance with subsection 3, the superintendent of public instruction shall:
- a. Subtract an amount equal to sixty mills multiplied by the taxable valuation of the school district; and
  - b. Subtract an amount equal to seventy-five percent of all revenue types listed in subdivisions c and d of subsection 1. Before determining the deduction for seventy-five percent of all revenue types, the superintendent of public instruction shall adjust revenues as follows:
    - (1) Tuition revenue shall be adjusted as follows:
      - (a) In addition to deducting tuition revenue received specifically for the operation of an educational program provided at a residential treatment facility, tuition revenue received for the provision of an adult farm management program, tuition received for the education of high-cost and special education students, and tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid as directed each school year in paragraph 3 of subdivision c of

subsection 1, the superintendent of public instruction also shall reduce the total tuition reported by the school district by the amount of tuition revenue received for the education of students not residing in the state and for which the state has not entered a cross-border education contract; and

(b) The superintendent of public instruction also shall reduce the total tuition reported by admitting school districts meeting the requirements of subdivision e of subsection 2 of section 15.1-29-12 by the amount of tuition revenue received for the education of students residing in an adjacent school district.

(2) After adjusting tuition revenue as provided in paragraph 1, the superintendent shall reduce all remaining revenues from all revenue types by the percentage of mills levied in 2020 by the school district for sinking and interest relative to the total mills levied in 2020 by the school district for all purposes.

5. The amount remaining after the computation required under subsection 4 is the amount of state aid to which a school district is entitled, subject to any other statutory requirements or limitations.
6. On or before June thirtieth of each year, the school board shall certify to the superintendent of public instruction the final average daily membership for the current school year.
7. For purposes of the calculation in subsection 4, each county auditor, in collaboration with the school districts, shall report the following to the superintendent of public instruction on an annual basis:
  - a. The amount of revenue received by each school district in the county during the previous school year for each type of revenue identified in subdivisions c and d of subsection 1;
  - b. The total number of mills levied in the previous calendar year by each school district for all purposes; and
  - c. The number of mills levied in the previous calendar year by each school district for sinking and interest fund purposes.

**SECTION 19. AMENDMENT.** Section 15.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-32-01. Definitions.**

As used in this chapter:

1. "Major life activities" include learning, walking, talking, breathing, and caring for oneself.
2. "Related services" means transportation and developmental and corrective or supportive services required to assist a student with disabilities to benefit from special education.
- 2-3. "Special education" means instruction designed to meet the needs of a student with disabilities, transportation, and corrective and supporting services

required to assist a student with disabilities in taking advantage of, or responding to, educational programs and opportunities.

- ~~3-4.~~ "Student who is gifted" means an individual who is identified by qualified professionals as being capable of high performance and who needs educational programs and services beyond those normally provided in a regular education program.
- 4-5. a. "Student with a disability" means an individual who is at least three years of age but who has not reached the age of twenty-one before August first of the year in which the individual turns twenty-one and who requires special education and related services because of:
- (1) An intellectual disability;
  - (2) A hearing impairment, including deafness;
  - (3) Deaf-blindness;
  - (4) A speech or language impairment;
  - (5) A visual impairment, including blindness;
  - (6) An emotional disturbance;
  - (7) An orthopedic impairment;
  - (8) Autism;
  - (9) A traumatic brain injury;
  - (10) Other health impairment; or
  - (11) A specific learning disability.
- b. "Student with a disability" includes a student age eighteen through twenty-one who is incarcerated in an adult correctional facility and who, in the last educational placement prior to incarceration, was identified as being a student with a disability and did not have an individualized education program or was identified as being a student with a disability and had an individualized education program.
6. "Student with a significant medical condition" means a student with a physical or mental impairment, whether permanent or temporary, which substantially limits one or more major life activities and who is not entitled to special education and related services.

**SECTION 20. AMENDMENT.** Section 15.1-32-14 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-32-14. Special education students – Contracts for placementHigh-cost students.**

1. If in the opinion of an individualized education program team or a services plan team a student with a disability or a student with a significant medical condition is unable to attend a public school in ~~the special education unit to~~

~~which the student's school district of residence belongs, the student's school district of residence shall contract to release the student at the time deemed necessary to begin attendance with another public school that:~~

- ~~a. Does not belong to the same special education unit;~~
- ~~b. Is located in this state;~~
- ~~e-b. Is willing to admit the student; and~~
- ~~d-c. Is able to provide appropriate services to the student.~~
- ~~2. The superintendent of public instruction shall approve in advance the terms of the contract and the services to be provided by the admitting school.~~
- ~~3. The contract must provide that the student's school district of residence is liable for the cost of educating the student.~~
- ~~4-3. Upon being notified by the district in which the student receives services that the student's school district of residence has not paid for services that were provided to the student, the superintendent of public instruction, after verification, shall withhold all state aid payments to which the student's school district of residence is entitled, until the required payments have been made.~~

**SECTION 21. 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 and other high-cost services.**

1. Each year the superintendent of public instruction shall identify the approximately one percent of ~~special education~~ students with a disability and students with a significant medical condition 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~~ education and services, including 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~~ the services to the identified students.
3. "Excess costs" are those that exceed four 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 with a

disability or significant medical condition, 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 times the state average cost of education per student.

**SECTION 22. AMENDMENT.** Section 54-24.3-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-24.3-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Academic library" means a library that is part of a college or university that is publicly or privately funded and whose primary role is to provide resources to enrich and support the school's curricula and the research needs of students and faculty.
2. "Library resource center" means a central service unit, whose location is to be agreed upon by members of the regional library cooperative and which is responsible for extending special services to support members of the regional library cooperative, while meeting all cooperative standards.
3. "Multitype library authority" means a geographic subdivision within which multitype libraries are organized for the purpose of providing library and information services through cooperation and mutual support.
4. "Participant library" means any library agreeing to join a regional library cooperative.
5. "Public library" means a library that is supported with funds derived from taxation and which maintains a balanced collection of materials to serve the lifelong information, reading, and recreational needs of the general population. For purposes of this chapter, "public library" includes tribal libraries.
6. "Regional library cooperative" means an organization of one or more types of library organized under Article VI of section 54-24.1-01, or a multitype library authority.
7. "School library media center" means a learning center operated as part of a publicly or privately supported school or school district and whose role is to provide instruction, cooperatively design learning strategies, and provide resources that support and enrich the curriculum, following the North Dakota school library media guidelines.
8. "Special library" means a public or private sector library whose collection is specialized and limited in scope and size and whose role is to provide information to a limited clientele.

**SECTION 23. EFFECTIVE DATE.** Senate Bill No. 2269, as approved by the sixty-eighth legislative assembly, becomes effective July 1, 2023. Sections 3, 4, and 7 of Senate Bill No. 2050, as approved by the sixty-eighth legislative assembly, become effective May 15, 2023.

**SECTION 24. EMERGENCY.** Sections 3, 4, and 7 of Senate Bill No. 2050 and Senate Bill No. 2269, as approved by the sixty-eighth legislative assembly, are declared to be an emergency measure.

Approved May 8, 2023

Filed May 9, 2023

# CHAPTER 46

## SENATE BILL NO. 2014

(Appropriations Committee)

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

### 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 protection and advocacy project for the purpose of defraying the expenses of the protection and advocacy project, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Protection and advocacy operations	\$7,402,940	\$186,971	\$7,589,911
Total all funds	\$7,402,940	\$186,971	\$7,589,911
Less estimated income	4,263,590	2,951	4,266,541
Total general fund	\$3,139,350	\$184,020	\$3,323,370
Full-time equivalent positions	28.50	0.00	28.50

Approved April 18, 2023

Filed April 19, 2023

## CHAPTER 47

### SENATE BILL NO. 2015

(Appropriations Committee)

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 appropriation to the office of the governor, legislative assembly, adjutant general, legislative council, department of environmental quality, department of labor and human rights, department of public instruction, department of commerce, department of health and human services, department of career and technical education, and judicial branch; to create and enact a new subsection to section 10-30.5-02 and a new subsection to section 54-44-11 of the North Dakota Century Code, relating to the purpose and use of the North Dakota development fund and a facility management operating fund; to amend and reenact section 15.1-27-04.1 as amended by section 10 of Senate Bill No. 2284, as approved by the sixty-eighth legislative assembly, sections 15.1-36-02 and 15.1-36-04, subsection 2 of the new section to chapter 19-03.1, as created by section 1 of Senate Bill No. 2248, as approved by the sixty-eighth legislative assembly, subsection 1 of section 21-10-12, as amended in section 3 of Senate Bill No. 2330, as approved by the sixty-eighth legislative assembly, section 24-02-37.3, as amended by section 10 of House Bill No. 1012, as approved by the sixty-eighth legislative assembly, sections 48-10-02, 54-06-14.7, and 54-21-19, sections 54-52-02.5, 54-52-02.9, 54-52-02.11, and 54-52-02.12, as amended in sections 3, 4, 5, and 6 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, section 54-52-02.15 as created by section 7 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, section 54-52-03, subsection 2 of section 54-52-06.4, as amended in section 1 of House Bill No. 1309, as approved by the sixty-eighth legislative assembly, subsection 4 of section 54-52-17, as amended in section 4 of House Bill No. 1183, as approved by the sixty-eighth legislative assembly, section 54-52.2-09 as created by section 13 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, subsection 3 of section 54-52.6-01 and section 54-52.6-02 as amended in sections 14 and 15 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, subsection 1 of section 54-52.6-02.1 and section 54-52.6-02.2 as created by sections 16 and 17 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, subsection 2 of section 54-52.6-03 as amended by section 18 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, section 54-52.6-09 as amended in section 22 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, section 54-63.1-04, and the new subsection to section 61-16.1-11, as created in section 1 of Senate Bill No. 2372, as approved by the sixty-eighth legislative assembly, of the North Dakota Century Code and section 2 of House Bill No. 1438, as approved by the sixty-eighth legislative assembly, relating to baseline funding and the determination of state school aid, loans from the coal development trust fund, evidence of indebtedness, distribution of illegal drugs, legacy fund earnings, the flexible transportation fund, the capitol grounds planning commission spending limit, the state leave sharing program, capitol grounds rent collections, the retirement board, the public employees retirement system retirement plan, the public employees retirement system plan for state peace officers, the clean sustainable energy authority duties, and joint water resource boards; to repeal

section 5 of Senate Bill No. 2020, as approved by the sixty-eighth legislative assembly, relating to a transfer of Bank of North Dakota profits to a water infrastructure revolving loan fund; to provide for a transfer; to provide an exemption; to provide for a legislative management study; to provide a report; to provide a penalty; to provide for application; to provide a retroactive effective date; to provide a contingent effective date; 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 the office of management and budget, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$21,926,979	\$1,231,851	\$23,158,830
Operating expenses	15,663,214	3,729,579	19,392,793
Capital assets	764,515	8,567,640	9,332,155
Emergency commission contingency fund	400,000	0	400,000
Targeted market equity pool	0	82,500,000	82,500,000
Guardianship grants	2,450,000	4,650,000	7,100,000
Prairie public broadcasting	1,200,000	1,792,450	2,992,450
Community service supervision grants	350,000	0	350,000
State student internship program	0	500,000	500,000
Governor's emergency education relief	0	3,659,555	3,659,555
Deferred maintenance funding pool	0	20,000,000	20,000,000
New and vacant FTE funding pool	0	98,200,000	98,200,000
Employer retirement contribution pool	0	12,538,779	12,538,779
Infrastructure grant	<u>0</u>	<u>200,000</u>	<u>200,000</u>
Total all funds	\$42,754,708	\$237,569,854	\$280,324,562
Less estimated income	<u>8,828,309</u>	<u>137,175,715</u>	<u>146,004,024</u>
Total general fund	\$33,926,399	\$100,394,139	\$134,320,538
Full-time equivalent positions	108.00	2.00	110.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Griggs County medical center grant	\$500,000	\$0
Facility consolidation study	350,000	0
Special assessments on capitol grounds	300,000	0
Interior and exterior signage projects	500,000	0
Statewide budget software	1,230,100	0
Capitol accessibility improvements	750,000	0
Legislative wing ventilation improvements	7,000,000	0

Pierce County medical center grant	1,000,000	0
Accrued leave retirement payouts	0	100,369
Inflationary increases	0	340,000
Capitol accessibility consulting	25,000	50,000
Accessibility improvements - legislative areas	0	150,000
State employee leave management system	0	335,000
Cash management study	0	450,000
Procurement software	2,021,204	400,000
Building automation project	518,800	800,000
Extraordinary repairs	500,000	250,000
Capitol space utilization improvements	0	2,500,000
Central services software and equipment	0	573,800
Governor's residence improvements	0	100,000
Brynhild Haugland room remodeling project	0	250,000
Capitol window replacement project	0	4,000,000
Deferred maintenance projects	10,000,000	20,000,000
Prairie public broadcasting grants	0	1,792,450
State student internship program	100,000	500,000
Governor's emergency education relief	0	3,659,555
Infrastructure grant	0	200,000
Total all funds	\$24,795,104	\$36,451,174
Less estimated income	<u>24,695,104</u>	<u>29,934,355</u>
Total general fund	\$100,000	\$6,516,819

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The office of management and budget shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

### **SECTION 3. APPROPRIATION - COMMUNITY SERVICE SUPERVISION FUND.**

Any moneys in the community service supervision fund under section 29-26-22 are appropriated to the office of management and budget for distribution to community corrections association regions on or before August first of each year for the biennium beginning July 1, 2023, and ending June 30, 2025.

### **SECTION 4. APPROPRIATION - 2021-23 BIENNIUM - OFFICE OF THE GOVERNOR - LEGISLATIVE ASSEMBLY.**

1. There is appropriated from special funds derived from federal funds or other income, not otherwise appropriated, the sum of \$6,500, or so much of the sum as may be necessary, to the office of the governor for the salaries and wages line item for the period beginning with the effective date of this section, and ending June 30, 2023.
2. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$5,000, or so much of the sum as may be necessary, to the legislative assembly for international legislators' forum dues for the period beginning with the effective date of this section, and ending June 30, 2023.

### **SECTION 5. APPROPRIATION - 2021-23 BIENNIUM - ADJUTANT GENERAL - STATE DISASTER RELIEF FUND - SNOW REMOVAL GRANTS - REPORT TO LEGISLATIVE MANAGEMENT.**

1. There is appropriated out of any moneys in the state disaster relief 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 adjutant general for the purpose of providing full season emergency snow removal grants to tribal governments, counties, cities, and townships, for the period beginning with the effective date of this section, and ending June 30, 2023.
2. A tribal government, county, township, or city may apply to the department of emergency services for a full season emergency snow removal grant for reimbursement of up to sixty percent of the snow removal costs incurred by the tribal government, county, city, or township for the period of October 1, 2022, through April 30, 2023, which exceeded one hundred fifty percent of the average snow removal cost for the seven-month period of October to April for the four lowest cost years for those years during the period beginning October 1, 2017, through April 30, 2022.
3. Each tribal government, county, city, or township requesting reimbursement under this section shall submit the request in accordance with guidelines developed by the department of emergency services. An award under subsection 2 must be reduced by any amount awarded under Senate Bill No. 2183, as approved by the sixty-eighth legislative assembly. A tribal government, county, city, or township may not be required to return any funds awarded under Senate Bill No. 2183, as approved by the sixty-eighth legislative assembly, due to the calculation completed under subsection 2.
4. The department of emergency services shall distribute the grants under this section before June 30, 2023, and shall report to the legislative management regarding the grants awarded.

**SECTION 6. APPROPRIATION - GENERAL FUND - LEGISLATIVE COUNCIL - DEPARTMENT OF ENVIRONMENTAL QUALITY - DEPARTMENT OF LABOR AND HUMAN RIGHTS - DEPARTMENT OF PUBLIC INSTRUCTION - DEPARTMENT OF COMMERCE - REPORT - ONE-TIME FUNDING.** For the biennium beginning July 1, 2023, and ending June 30, 2025, there is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the following amounts, or so much of the sum as may be necessary:

1. \$500,000 to the legislative council for the purpose of contracting for a performance audit of the state auditor and for other consulting services of interim committees. The chairman of the legislative management shall arrange for the audit and receive the audit report. The performance audit must address the efficiency and effectiveness of the state auditor's office relative to industry best practices. The performance audit must include a review of the appropriateness of the number of hours to complete audits; methods used to monitor staff time and allocate hours charged to audits; billing processes; quality assurance processes; the adequacy and timeliness of communications with audited entities, governing boards, and the public; and other areas as determined by the chairman of the legislative management. The funding provided in this subsection is considered a one-time funding item.
2. \$40,000 to the department of environmental quality for the purpose of providing meeting expense reimbursement to members of the onsite wastewater recycling technical committee. A member of the committee who is not a state employee is entitled to reimbursement for mileage and expenses as provided by law for state officers and employees, to be paid by the

department of environmental quality. A state employee who is a member of the committee is entitled to receive that employee's regular salary and is entitled to reimbursement for mileage and expenses to be paid by the employing agency.

3. \$50,000 to the department of labor and human rights for the purpose of defraying expenses of analyzing the administration of occupational and professional boards pursuant to Senate Bill No. 2249, as approved by the sixty-eighth legislative assembly. The funding provided in this subsection is considered a one-time funding item.
4. \$3,000,000 to the department of public instruction for the purpose of providing integrated formula payments.
5. \$500,000 to the department of commerce for the purpose of providing workforce development grants to a tribally controlled community college in the Turtle Mountain area. To be eligible for a grant under this section, a tribally controlled community college shall partner with at least one high school in the state for programs under section 54-60.2-02. During the 2023-24 interim, a tribally controlled community college receiving funding under this program shall report to the department of commerce by August 1, 2024, regarding the use of grant funds and the department of commerce shall provide a report to the legislative management by October 1, 2024, regarding the use of grant funds. The funding provided in this subsection is considered a one-time funding item.
6. \$2,000,000 to the department of commerce for the purpose of defraying the expenses of the office of legal immigration. The funding provided in this subsection is considered a one-time funding item.

**SECTION 7. APPROPRIATION - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - DEPARTMENT OF HEALTH AND HUMAN SERVICES - DEPARTMENT OF CAREER AND TECHNICAL EDUCATION - ONE-TIME FUNDING - LEGISLATIVE MANAGEMENT REPORT.** For the biennium beginning July 1, 2023, and ending June 30, 2025, there is appropriated out of any moneys in the strategic investment and improvements fund in the state treasury, not otherwise appropriated, the following amounts, or so much of the sum as may be necessary:

1. \$8,250,000 to the department of health and human services for the purpose of providing a behavioral health facility grant. The department of health and human services shall provide the grant as follows:
  - a. A grant of \$8,250,000 must be provided to establish a behavioral health facility in the badlands human service center service region. The grant recipient must provide matching funds of \$1,950,000 to establish the facility.
  - b. The department shall require an entity receiving funding under this subsection to operate the facility for a period of at least ten years and require the grant amount to be repaid if the entity does not operate the facility for at least ten years.
  - c. The requirements of chapter 54-44.4 do not apply to the selection of a grant recipient, the grant award, or payments made under this subsection.
  - d. The funding provided under this subsection is a one-time funding item.

2. \$26,500,000 to the department of career and technical education for the purpose of defraying inflationary costs of existing projects approved under the statewide area career center initiative grant program during the 2021-23 biennium. The department of career and technical education shall distribute the funding to existing career academy projects proportionally based on funding allocations provided to each project during the 2021-23 biennium. If funding approved in this subsection is provided for a career academy project and the funding becomes uncommitted during the 2023-25 biennium, the department of career and technical education may redistribute the funding for existing projects under the program during the biennium beginning July 1, 2023, and ending June 30, 2025. The department of career and technical education shall report to the legislative management during the 2023-24 interim and to the appropriations committees of the sixty-ninth legislative assembly regarding the amount of inflationary funding provided for each project and the construction status of each project. The funding provided under this subsection is considered a one-time funding item.

**SECTION 8. APPROPRIATION - JUDICIAL BRANCH - EMPLOYER RETIREMENT CONTRIBUTION FUNDING.** 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 providing funding for the cost of the one percent employer retirement contribution increase included in House Bill No. 1040, as approved by the sixty-eighth legislative assembly, for the biennium beginning July 1, 2023, and ending June 30, 2025.

Salaries and wages	<u>\$347,518</u>
Total all funds	<u>\$347,518</u>
Less estimated income	<u>4,273</u>
Total general fund appropriation	<u>\$343,245</u>

**SECTION 9. APPROPRIATION - LEGISLATIVE COUNCIL - EMPLOYER RETIREMENT CONTRIBUTION FUNDING.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$58,283, or so much of the sum as may be necessary, to the legislative council for the purpose of providing funding for the cost of the one percent employer retirement contribution increase included in House Bill No. 1040, as approved by the sixty-eighth legislative assembly, for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 10. APPROPRIATION - TRANSFER OF APPROPRIATION AUTHORITY - FEDERAL STATE FISCAL RECOVERY FUND - EXEMPTION - SPENDING RESTRICTION - REPORT.**

1. Notwithstanding any other provision of law, on December 1, 2024, the office of management and budget shall transfer any uncommitted federal state fiscal recovery fund appropriation authority from the state agency that received the appropriation authority to the department of corrections and rehabilitation for the purpose of defraying the expenses of salaries and wages and other operating costs of the department of corrections and rehabilitation for the biennium beginning July 1, 2023, and ending June 30, 2025.
2. The office of management and budget shall transfer any uncommitted accumulated interest and earnings of the federal state fiscal recovery fund to the department of corrections and rehabilitation during the biennium beginning July 1, 2023, and ending June 30, 2025. Any interest and earnings received

by the department of corrections and rehabilitation under this section are appropriated to the department for the purpose of defraying the expenses of salaries and wages and other operating costs of the department for the biennium beginning July 1, 2023, and ending June 30, 2025.

3. The department of corrections and rehabilitation may not spend general fund savings resulting from the use of the federal state fiscal recovery fund moneys.
4. The office of management and budget shall report to the budget section regarding any appropriation authority and interest and earnings transferred under this section.

**SECTION 11. TRANSFER - TAX RELIEF FUND OR SOCIAL SERVICES FUND TO HUMAN SERVICE FINANCE FUND.** The office of management and budget shall transfer the sum of \$200,000,000 from the tax relief fund or the social services fund under section 57-51.1-07.5 to the human service finance fund during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 12. TRANSFER - STATE STUDENT INTERNSHIP PROGRAM FUNDS TO STATE AGENCIES.** The office of management and budget shall transfer funds from the state student internship program line item in section 1 of this Act to eligible state agencies for student internships during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 13. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO GENERAL FUND.** The office of management and budget shall transfer the sum of \$50,000,000 from the strategic investment and improvements fund to the general fund during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 14. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO NORTH DAKOTA DEVELOPMENT FUND.** The office of management and budget shall transfer the sum of \$30,000,000 from the strategic investment and improvements fund to the North Dakota development fund for programs under chapter 10-30.5, during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 15. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - DEFERRED MAINTENANCE FUNDING POOL - EXEMPTION - TRANSFER TO STATE AGENCIES.** The sum of \$20,000,000 included in the deferred maintenance funding pool line item in section 1 of this Act and identified as one-time funding in section 2 of this Act is from the strategic investment and improvements fund for a deferred maintenance funding pool. The office of management and budget may use up to \$12,700,000 from the deferred maintenance funding pool, including up to \$12,000,000 for a boiler replacement project in the capitol and up to \$700,000 for a water mitigation project at the liberty memorial building. Notwithstanding any other provision of law, the office of management and budget shall transfer funds from the deferred maintenance funding pool line item in section 1 of this Act to other eligible state agencies for deferred maintenance.

**SECTION 16. ESTIMATED INCOME - CAPITOL BUILDING FUND.** The sum of \$5,550,000 included in the capital assets line item in section 1 of this Act and identified as one-time funding in section 2 of this Act is from the capitol building fund for the following:

1. \$150,000 for accessibility improvements in legislative areas of the capitol;
2. \$800,000 for a building automation project;
3. \$250,000 for electrical and mechanical repairs;
4. \$100,000 for security improvements at the governor's residence;
5. \$250,000 for a remodeling project in the Brynhild Haugland room in the capitol; and
6. \$4,000,000 for a capitol window replacement project.

**SECTION 17. OPERATING EXPENSES LINE ITEM - CASH MANAGEMENT STUDY - OFFICE OF MANAGEMENT AND BUDGET - REPORT TO LEGISLATIVE MANAGEMENT.** The operating expenses line item in section 1 of this Act includes the sum of \$450,000 from the general fund for the purpose of the office of management and budget procuring consulting services to conduct a study and develop recommendations for improvement of the cash management practices of the state, for the biennium beginning July 1, 2023, and ending June 30, 2025. The study must include cash management practices employed by the Bank of North Dakota, state treasurer, retirement and investment office, board of university and school lands, and other agencies as determined by the office of management and budget. The office of management and budget shall report to the legislative management before September 30, 2024, regarding the findings and recommendations resulting from its study.

**SECTION 18. INFRASTRUCTURE GRANT LINE ITEM - RURAL SENIOR CENTER.** The infrastructure grant line item in section 1 of this Act includes the sum of \$200,000 from the general fund for the purpose of providing a rural senior center infrastructure grant to an organization in Wells County located in a city with a population between 1,500 and 1,800 according to the 2020 census, for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 19. GRANTS AND SPECIAL ITEMS.** Section 1 of this Act includes appropriation authority which may be used only for the following grants and special items:

Unemployment insurance	\$1,800,000
Capitol grounds planning commission	\$25,000
Statewide memberships and related expenses	\$685,657

**SECTION 20. TARGETED MARKET EQUITY COMPENSATION ADJUSTMENTS - GUIDELINES - EXEMPTION - TRANSFER OF APPROPRIATION AUTHORITY - BUDGET SECTION REPORT.**

1. The targeted market equity pool line item in section 1 of this Act includes \$45,100,000 from the general fund and \$37,400,000 from special funds derived from federal funds and other income for the purpose of providing compensation adjustments for executive branch state employees in accordance with provisions of this section for the period beginning with the effective date of this section and ending June 30, 2025.
2. The targeted market equity compensation adjustments must be prioritized based on a statewide plan prepared by the office of management and budget based on the funding available in the pool. The plan must address

occupational market disparities, recruitment and retention challenges, and external pay inequities for employees who are critical to the mission of the agency. Employees whose documented performance levels do not meet standards are not eligible for the market equity compensation adjustments.

3. All targeted market equity compensation adjustments must be provided by July 1, 2023.
4. The funding allocated to each agency must be used for the cost to continue the compensation adjustments for the 2023-25 biennium, including the effect of the market equity adjustments on funding needed for the salary increases authorized by the legislative assembly in section 21 of this Act.
5. Notwithstanding any other provision of law, the office of management and budget shall transfer appropriation authority from the targeted market equity funding pool to eligible executive branch state agencies for approved targeted market equity salary adjustments.
6. The office of management and budget shall provide a report to the budget section regarding the statewide plan, any changes to the plan presented to the sixty-eighth legislative assembly, and the appropriation authority transferred from the pool.

#### **SECTION 21. STATE EMPLOYEE COMPENSATION ADJUSTMENTS - GUIDELINES.**

1. The 2023-25 biennium compensation adjustments for permanent state employees are to average 6 percent per eligible employee for the first fiscal year of the biennium and are to average 4 percent per eligible employee for the second year of the biennium. The increases for the first year of the biennium are to be given beginning with the month of July 2023, to be paid in August 2023, and for the second year of the biennium are to be given beginning with the month of July 2024, to be paid in August 2024. Increases for eligible state employees are to be based on documented performance and are not to be the same percentage increase for each employee.
2. The office of management and budget shall develop guidelines for use by state agencies for providing compensation adjustments for classified state employees. The guidelines must follow the compensation philosophy statement under section 54-44.3-01.2.
3. Probationary employees are not entitled to the increases. However, at the discretion of the appointing authority, probationary employees may be given all or a portion of the increases effective in July, paid in August, or upon completion of probation. Employees whose overall documented performance level does not meet standards are not eligible for any salary increase.

#### **SECTION 22. NEW AND VACANT FTE FUNDING POOL - GUIDELINES - EXEMPTION - TRANSFER OF APPROPRIATION AUTHORITY - APPLICATION - BUDGET SECTION REPORT.**

1. The new and vacant FTE funding pool line item in section 1 of this Act includes \$40,100,000 from the general fund and \$58,100,000 from special funds derived from federal funds and other income for the purpose of providing funding for hiring new full-time equivalent positions and for agencies that do not realize sufficient savings from vacant full-time equivalent positions

in accordance with provisions of this section for the biennium beginning July 1, 2023, and ending June 30, 2025.

2. An executive branch state agency that had funding removed by the sixty-eighth legislative assembly for purposes of the new and vacant full-time equivalent funding pool may submit a request to the office of management and budget for an allocation of funding from the pool:
  - a. To provide funding for the salaries and wages necessary for the 2023-25 biennium for a new full-time equivalent position authorized by the sixty-eighth legislative assembly from the date of hiring through the end of the biennium;
  - b. To provide funding for the salaries and wages necessary for the 2023-25 biennium for filling a full-time equivalent position that was vacant on July 1, 2023, from the date of hiring through the end of the biennium;
  - c. After March 1, 2025, for salaries and wages funding necessary for the 2023-25 biennium if actual salaries and wages savings from vacant positions adjusted for other salaries and wages uses are less than the estimate used by the sixty-eighth legislative assembly in the development of the agency's appropriation; or
  - d. As requested by the department of transportation, the sum of up to \$7,400,000 for salaries and wages funding needs.
3. The office of management and budget may transfer general fund appropriation authority from the pool to an agency only upon the agency certifying to the office of management and budget that special funds from federal or other sources are not available for the salaries and wages of the full-time equivalent position.
4. An agency may not receive more funding from the pool than the amount that was removed from the agency budget for new and vacant full-time equivalent positions as contained in the statement of purpose of amendment of bills approved by the sixty-eighth legislative assembly as printed in the house and senate journals.
5. Notwithstanding any other provision of law, the office of management and budget shall transfer appropriation authority from the new and vacant full-time equivalent funding pool to eligible executive branch state agencies:
  - a. Within fifteen days of receiving an agency request for the hiring of a new full-time equivalent position authorized by the sixty-eighth legislative assembly, along with documentation of the salaries and wages necessary for the position for the remainder of the biennium, limited to the amount identified for the position in the statement of purpose of amendment;
  - b. Within fifteen days of receiving an agency request for filling a full-time equivalent position that was vacant on July 1, 2023, along with documentation verifying that funding available for salaries and wages within the agency's budget is insufficient to provide funding for the position for the remainder of the biennium;

- c. Within thirty days of receiving an agency request, along with documentation verifying that actual salaries and wages savings from vacant positions through February 2025 and estimates for the remainder of the biennium adjusted for other salaries and wages uses are less than the estimate used by the sixty-eighth legislative assembly in the development of the agency's appropriation; or
  - d. Within fifteen days of receiving a request from the department of transportation to transfer the sum of up to \$7,400,000 for salaries and wages funding needs.
6. The provisions of section 54-27-10 do not apply to the salaries and wages line item of appropriations approved by the sixty-eighth legislative assembly for the biennium beginning July 1, 2023, and ending June 30, 2025.
  7. If funding in the new and vacant full-time equivalent funding pool is insufficient to provide the necessary salaries and wages funding for the biennium, the office of management and budget shall request a deficiency appropriation from the sixty-ninth legislative assembly. Any funding remaining in the funding pool at the end of the biennium must be canceled in accordance with the provisions of section 54-44.1-11.
  8. The office of management of budget shall report to each meeting of the budget section regarding salaries and wages, vacant position information, and use of funding in the pool including:
    - a. The number of agency requests submitted, amounts transferred from the pool, and information on:
      - (1) New full-time equivalent positions, including the date hired; and
      - (2) Vacant full-time equivalent positions, including dates the positions were vacated and filled;
    - b. Salaries and wages savings to date resulting from vacant positions by agency; and
    - c. Each agency's use of salaries and wages funding, including amounts spent for accrued leave payouts, salary increases in addition to general salary increases provided by the sixty-eighth legislative assembly, bonuses, incentive or location pay adjustments, reclassifications, funding used for temporary salaries or overtime in excess of amounts provided by the sixty-eighth legislative assembly, or other purposes.

**SECTION 23. EMPLOYER RETIREMENT CONTRIBUTION POOL - GUIDELINES - EXEMPTION - TRANSFER OF APPROPRIATION AUTHORITY.**

1. The employer retirement contribution pool line item in section 1 of this Act includes \$5,563,709 from the general fund and \$6,975,070 from special funds derived from federal funds and other income for providing funding to executive branch agencies for the increased cost of the employer retirement contribution increases included in House Bill No. 1040, House Bill No. 1183, and House Bill No. 1309, as approved by the sixty-eighth legislative assembly, in accordance with provisions of this section, for the biennium beginning July 1, 2023, and ending June 30, 2025.

2. Notwithstanding any other provision of law, the office of management and budget shall transfer appropriation authority provided in this section to the listed executive branch state agencies as follows:

	<u>General Fund</u>	<u>Other Funds</u>	<u>Total Funds</u>
Governor	\$26,154	\$0	\$26,154
Secretary of state	24,295	4,050	28,345
Office of management and budget	95,753	16,423	112,176
Information technology department	104,514	525,014	629,528
State auditor	44,533	32,769	77,302
State treasurer	7,502	0	7,502
Attorney general	1,268,037	843,938	2,111,975
Tax commissioner	114,348	0	114,348
Office of administrative hearings	0	7,135	7,135
Commission on legal counsel for indigents	45,111	1,268	46,379
Retirement and investment office	0	42,355	42,355
Public employees retirement system	0	36,736	36,736
Ethics commission	1,957	0	1,957
Department of public instruction	31,605	53,383	84,988
North Dakota university system	39,435	16,789	56,224
Department of trust lands	0	40,947	40,947
Bismarck state college	31,441	56,303	87,744
Lake region state college	14,693	20,449	35,142
Williston state college	8,607	12,224	20,831
University of North Dakota	100,821	520,248	621,069
University of North Dakota school of medicine and health sciences	38,691	68,304	106,995
North Dakota state university	97,772	375,024	472,796
North Dakota state college of science	43,662	53,548	97,210
Dickinson state university	15,061	19,859	34,920
Mayville state university	11,331	43,952	55,283
Minot state university	31,980	49,180	81,160
Valley City state university	17,606	16,577	34,183
Dakota college at Bottineau	8,526	9,863	18,389
North Dakota forest service	8,411	669	9,080
State library	16,695	3,148	19,843
School for the deaf	23,099	1,617	24,716
North Dakota vision services - school for the blind	12,195	1,382	13,577
Center for distance education	9,799	0	9,799
Department of career and technical education	21,878	3,144	25,022
Department of health and human services - public health	49,333	156,146	205,479
Department of environmental quality	51,295	119,961	171,256
Veterans' home	20,372	58,979	79,351
Indian affairs commission	4,454	0	4,454
Department of veterans' affairs	7,261	1,075	8,336
Department of health and human services - human services	1,265,293	831,416	2,096,709
Protection and advocacy project	12,935	16,646	29,581
Job service North Dakota	1,878	138,944	140,822
Insurance commissioner	0	51,040	51,040
Industrial commission	123,610	11,031	134,641

Department of labor and human rights	11,636	2,448	14,084
Public service commission	26,468	21,823	48,291
Aeronautics commission	0	8,712	8,712
Department of financial institutions	0	42,723	42,723
Securities department	0	11,771	11,771
Bank of North Dakota	0	181,939	181,939
Housing finance agency	0	53,004	53,004
Mill and elevator association	0	168,887	168,887
Workforce safety and insurance	0	254,365	254,365
Highway patrol	15,723	14,180	29,903
Department of corrections and rehabilitation	1,111,528	59,883	1,171,411
Adjutant general	128,680	235,829	364,509
Department of commerce	65,463	12,165	77,628
Agriculture commissioner	46,693	31,803	78,496
Upper great plains transportation institute	4,868	11,964	16,832
Branch research centers	21,139	14,106	35,245
NDSU extension service	22,744	17,085	39,829
Northern crops institute	797	671	1,468
NDSU main research center	33,694	9,151	42,845
Agronomy seed farm	0	2,958	2,958
North Dakota racing commission	2,008	105	2,113
State historical society	66,191	9,389	75,580
Council on the arts	5,650	0	5,650
Game and fish department	0	381,164	381,164
Parks and recreation department	148,484	8,375	156,859
Department of water resources	0	108,163	108,163
Department of transportation	0	1,050,871	1,050,871
Total	\$5,563,709	\$6,975,070	\$12,538,779

<sup>15</sup> **SECTION 24.** A new subsection to section 10-30.5-02 of the North Dakota Century Code is created and enacted as follows:

Moneys in the fund may be used to provide financing for projects that enhance production of clean sustainable energy in the state only to the extent the project has been recommended by the clean sustainable energy authority under chapter 54-63.1.

<sup>16</sup> **SECTION 25. AMENDMENT.** Section 15.1-27-04.1 of the North Dakota Century Code as amended by section 10 of Senate Bill No. 2284, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

**15.1-27-04.1. Baseline funding - Establishment - Determination of state aid. (Effective through June 30, 2025)**

1. To determine the amount of state aid payable to each district, the superintendent of public instruction shall establish each district's baseline funding. A district's baseline funding consists of:

<sup>15</sup> Section 10-30.5-02 was also amended by section 1 of House Bill No. 1216, chapter 105.

<sup>16</sup> Section 15.1-27-04.1 was also amended by section 18 of Senate Bill No. 2013, chapter 45, and section 10 of Senate Bill No. 2284, chapter 173.

- a. All state aid received by the district in accordance with chapter 15.1-27 during the 2018-19 school year;
- b. An amount equal to the property tax deducted by the superintendent of public instruction to determine the 2018-19 state aid payment;
- c. An amount equal to seventy-five percent of the revenue received by the school district during the 2017-18 school year for the following revenue types:
  - (1) Revenue 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;
  - (2) Mineral revenue received by the school district through direct allocation from the state treasurer and not 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;
  - (3) Tuition 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, with the exception of revenue received specifically for the operation of an educational program provided at a residential treatment facility, tuition received for the provision of an adult farm management program, and beginning in the 2021-22 school year, seventeen percent of tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid, and an additional seventeen percent of tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid each school year thereafter, until the 2024-25 school year when sixty-eight percent of tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid must be excluded from the tuition calculation under this paragraph;
  - (4) Revenue from payments in lieu of taxes on the distribution and transmission of electric power;
  - (5) Revenue from payments in lieu of taxes on electricity generated from sources other than coal; and
  - (6) Revenue from the leasing of land acquired by the United States for which compensation is allocated to the state under 33 U.S.C. 701(c) (3);
- d. An amount equal to the total revenue received by the school district during the 2017-18 school year for the following revenue types:
  - (1) Mobile home tax revenue;
  - (2) Telecommunications tax revenue; and

- (3) Revenue from payments in lieu of taxes and state reimbursement of the homestead credit and disabled veterans credit; and
- e. Beginning with the 2020-21 school year, the superintendent shall reduce the baseline funding for any school district that becomes an elementary district pursuant to section 15.1-07-27 after the 2012-13 school year. The reduction must be proportional to the number of weighted student units in the grades that are offered through another school district relative to the total number of weighted student units the school district offered in the year before the school district became an elementary district. The reduced baseline funding applies to the calculation of state aid for the first school year in which the school district becomes an elementary district and for each year thereafter. For districts that become an elementary district prior to the 2020-21 school year, the superintendent shall use the reduced baseline funding to calculate state aid for the 2020-21 school year and for each year thereafter.
2. a. The superintendent shall divide the district's baseline funding determined in subsection 1 by the district's 2017-18 weighted student units to determine the district's baseline funding per weighted student unit.
  - b. For any school district that becomes an elementary district pursuant to section 15.1-07-27 after the 2017-18 school year, the superintendent shall adjust the district's baseline funding per weighted student unit used to calculate state aid. The superintendent shall divide the district's baseline funding determined in subsection 1 by the district's weighted student units after the school district becomes an elementary district to determine the district's adjusted baseline funding per weighted student unit. The superintendent shall use the district's adjusted baseline funding per weighted student unit in the calculation of state aid for the first school year in which the school district becomes an elementary district and for each year thereafter.
  - c. Beginning with the 2021-22 school year and for each school year thereafter, the superintendent shall reduce the district's baseline funding per weighted student unit. Each year the superintendent shall calculate the amount by which the district's baseline funding per weighted student unit exceeds the payment per weighted student unit provided in subsection 3. ~~TheFor the 2023-24 school year the~~ superintendent shall reduce the district's baseline funding per weighted student unit by ~~fifteen~~forty percent of the amount by which the district's baseline funding per weighted student unit exceeds the payment per weighted student unit for the ~~2024-22~~2023-24 school year. For each year thereafter, the reduction percentage is increased by an additional fifteen percent. However, the district's baseline funding per weighted student unit, after the reduction, may not be less than the payment per weighted student unit provided in subsection 3.
3. a. For the 2023-24 school year, the superintendent shall calculate state aid as the greater of:
    - (1) The district's weighted student units multiplied by ten thousand six hundred forty-six dollars;

- (2) One hundred two percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units, not to exceed the district's 2017-18 baseline weighted student units, plus any weighted student units in excess of the 2017-18 baseline weighted student units multiplied by ten thousand six hundred forty-six dollars; or
    - (3) The district's baseline funding as established in subsection 1 less the amount in paragraph 1, with the difference reduced by ~~forty-five~~forty percent and then the difference added to the amount determined in paragraph 1.
  - b. For the 2024-25 school year and each school year thereafter, the superintendent shall calculate state aid as the greater of:
    - (1) The district's weighted student units multiplied by eleven thousand seventy-two dollars;
    - (2) One hundred two percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units, not to exceed the district's 2017-18 baseline weighted student units, plus any weighted student units in excess of the 2017-18 baseline weighted student units multiplied by eleven thousand seventy-two dollars; or
    - (3) The district's baseline funding as established in subsection 1 less the amount in paragraph 1, with the difference reduced by ~~sixty~~fifty-five percent for the 2024-25 school year and the reduction percentage increasing by fifteen percent each school year thereafter until the difference is reduced to zero, and then the difference added to the amount determined in paragraph 1.
4. After determining the product in accordance with subsection 3, the superintendent of public instruction shall:
  - a. Subtract an amount equal to sixty mills multiplied by the taxable valuation of the school district, except the amount in dollars subtracted for purposes of this subdivision may not exceed the previous year's amount in dollars subtracted for purposes of this subdivision by more than twelve percent, adjusted pursuant to section 15.1-27-04.3; and
  - b. Subtract an amount equal to seventy-five percent of all revenue types listed in subdivisions c and d of subsection 1. Before determining the deduction for seventy-five percent of all revenue types, the superintendent of public instruction shall adjust revenues as follows:
    - (1) Tuition revenue shall be adjusted as follows:
      - (a) In addition to deducting tuition revenue received specifically for the operation of an educational program provided at a residential treatment facility, tuition revenue received for the provision of an adult farm management program, and tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid as directed each school year in paragraph 3 of subdivision c of

subsection 1, the superintendent of public instruction also shall reduce the total tuition reported by the school district by the amount of tuition revenue received for the education of students not residing in the state and for which the state has not entered a cross-border education contract; and

(b) The superintendent of public instruction also shall reduce the total tuition reported by admitting school districts meeting the requirements of subdivision e of subsection 2 of section 15.1-29-12 by the amount of tuition revenue received for the education of students residing in an adjacent school district.

(2) After adjusting tuition revenue as provided in paragraph 1, the superintendent shall reduce all remaining revenues from all revenue types by the percentage of mills levied in 2022 by the school district for sinking and interest relative to the total mills levied in 2022 by the school district for all purposes.

5. The amount remaining after the computation required under subsection 4 is the amount of state aid to which a school district is entitled, subject to any other statutory requirements or limitations.
6. On or before June thirtieth of each year, the school board shall certify to the superintendent of public instruction the final average daily membership for the current school year.
7. For purposes of the calculation in subsection 4, each county auditor, in collaboration with the school districts, shall report the following to the superintendent of public instruction on an annual basis:
  - a. The amount of revenue received by each school district in the county during the previous school year for each type of revenue identified in subdivisions c and d of subsection 1;
  - b. The total number of mills levied in the previous calendar year by each school district for all purposes; and
  - c. The number of mills levied in the previous calendar year by each school district for sinking and interest fund purposes.

**Baseline funding - Establishment - Determination of state aid. (Effective after June 30, 2025)**

1. To determine the amount of state aid payable to each district, the superintendent of public instruction shall establish each district's baseline funding. A district's baseline funding consists of:
  - a. All state aid received by the district in accordance with chapter 15.1-27 during the 2018-19 school year;
  - b. An amount equal to the property tax deducted by the superintendent of public instruction to determine the 2018-19 state aid payment;
  - c. An amount equal to seventy-five percent of the revenue received by the school district during the 2017-18 school year for the following revenue types:

- (1) Revenue 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;
  - (2) Mineral revenue received by the school district through direct allocation from the state treasurer and not 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;
  - (3) Tuition 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, with the exception of revenue received specifically for the operation of an educational program provided at a residential treatment facility, tuition received for the provision of an adult farm management program, and beginning in the 2025-26 school year, eighty-five percent of tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid, until the 2026-27 school year, and each school year thereafter, when all tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid must be excluded from the tuition calculation under this paragraph;
  - (4) Revenue from payments in lieu of taxes on the distribution and transmission of electric power;
  - (5) Revenue from payments in lieu of taxes on electricity generated from sources other than coal; and
  - (6) Revenue from the leasing of land acquired by the United States for which compensation is allocated to the state under 33 U.S.C. 701(c) (3); and
- d. An amount equal to the total revenue received by the school district during the 2017-18 school year for the following revenue types:
- (1) Mobile home tax revenue;
  - (2) Telecommunications tax revenue; and
  - (3) Revenue from payments in lieu of taxes and state reimbursement of the homestead credit and disabled veterans credit.
- e. Beginning with the 2020-21 school year, the superintendent shall reduce the baseline funding for any school district that becomes an elementary district pursuant to section 15.1-07-27 after the 2012-13 school year. The reduction must be proportional to the number of weighted student units in the grades that are offered through another school district relative to the total number of weighted student units the school district offered in the year before the school district became an elementary district. The reduced baseline funding applies to the calculation of state aid for the first school year in which the school district becomes an elementary district and for

- each year thereafter. For districts that become an elementary district prior to the 2020-21 school year, the superintendent shall use the reduced baseline funding to calculate state aid for the 2020-21 school year and for each year thereafter.
2. a. The superintendent shall divide the district's baseline funding determined in subsection 1 by the district's 2017-18 weighted student units to determine the district's baseline funding per weighted student unit.
  - b. For any school district that becomes an elementary district pursuant to section 15.1-07-27 after the 2017-18 school year, the superintendent shall adjust the district's baseline funding per weighted student unit used to calculate state aid. The superintendent shall divide the district's baseline funding determined in subsection 1 by the district's weighted student units after the school district becomes an elementary district to determine the district's adjusted baseline funding per weighted student unit. The superintendent shall use the district's adjusted baseline funding per weighted student unit in the calculation of state aid for the first school year in which the school district becomes an elementary district and for each year thereafter.
  - c. Beginning with the 2021-22 school year and for each school year thereafter, the superintendent shall reduce the district's baseline funding per weighted student unit. Each year the superintendent shall calculate the amount by which the district's baseline funding per weighted student unit exceeds the payment per weighted student unit provided in subsection 3. ~~TheFor the 2023-24 school year the superintendent shall reduce the district's baseline funding per weighted student unit by fifteen~~forty percent of the amount by which the district's baseline funding per weighted student unit exceeds the payment per weighted student unit for the ~~2024-22~~2023-24 school year. For each year thereafter, the reduction percentage is increased by an additional fifteen percent. However, the district's baseline funding per weighted student unit, after the reduction, may not be less than the payment per weighted student unit provided in subsection 3.
3. a. For the 2023-24 school year, the superintendent shall calculate state aid as the greater of:
    - (1) The district's weighted student units multiplied by ten thousand six hundred forty-six dollars;
    - (2) One hundred two percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units, not to exceed the district's 2017-18 baseline weighted student units, plus any weighted student units in excess of the 2017-18 baseline weighted student units multiplied by ten thousand six hundred forty-six dollars; or
    - (3) The district's baseline funding as established in subsection 1 less the amount in paragraph 1, with the difference reduced by ~~forty-five~~forty percent and then the difference added to the amount determined in paragraph 1.

- b. For the 2024-25 school year and each school year thereafter, the superintendent shall calculate state aid as the greater of:
  - (1) The district's weighted student units multiplied by eleven thousand seventy-two dollars;
  - (2) One hundred two percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units, not to exceed the district's 2017-18 baseline weighted student units, plus any weighted student units in excess of the 2017-18 baseline weighted student units multiplied by eleven thousand seventy-two dollars; or
  - (3) The district's baseline funding as established in subsection 1 less the amount in paragraph 1, with the difference reduced by ~~sixty~~fifty-five percent for the 2024-25 school year and the reduction percentage increasing by fifteen percent each school year thereafter until the difference is reduced to zero, and then the difference added to the amount determined in paragraph 1.
4. After determining the product in accordance with subsection 3, the superintendent of public instruction shall:
  - a. Subtract an amount equal to sixty mills multiplied by the taxable valuation of the school district; and
  - b. Subtract an amount equal to seventy-five percent of all revenue types listed in subdivisions c and d of subsection 1. Before determining the deduction for seventy-five percent of all revenue types, the superintendent of public instruction shall adjust revenues as follows:
    - (1) Tuition revenue shall be adjusted as follows:
      - (a) In addition to deducting tuition revenue received specifically for the operation of an educational program provided at a residential treatment facility, tuition revenue received for the provision of an adult farm management program, and tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid as directed each school year in paragraph 3 of subdivision c of subsection 1, the superintendent of public instruction also shall reduce the total tuition reported by the school district by the amount of tuition revenue received for the education of students not residing in the state and for which the state has not entered a cross-border education contract; and
      - (b) The superintendent of public instruction also shall reduce the total tuition reported by admitting school districts meeting the requirements of subdivision e of subsection 2 of section 15.1-29-12 by the amount of tuition revenue received for the education of students residing in an adjacent school district.
    - (2) After adjusting tuition revenue as provided in paragraph 1, the superintendent shall reduce all remaining revenues from all revenue types by the percentage of mills levied in 2022 by the school district for

sinking and interest relative to the total mills levied in 2022 by the school district for all purposes.

5. The amount remaining after the computation required under subsection 4 is the amount of state aid to which a school district is entitled, subject to any other statutory requirements or limitations.
6. On or before June thirtieth of each year, the school board shall certify to the superintendent of public instruction the final average daily membership for the current school year.
7. For purposes of the calculation in subsection 4, each county auditor, in collaboration with the school districts, shall report the following to the superintendent of public instruction on an annual basis:
  - a. The amount of revenue received by each school district in the county during the previous school year for each type of revenue identified in subdivisions c and d of subsection 1;
  - b. The total number of mills levied in the previous calendar year by each school district for all purposes; and
  - c. The number of mills levied in the previous calendar year by each school district for sinking and interest fund purposes.

<sup>17</sup> **SECTION 26. AMENDMENT.** Section 15.1-36-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-36-02. Coal development trust fund - Board of university and school lands - School construction projects - Unanticipated construction projects and emergency repairs - Loans.**

1. Up to sixty million dollars from the coal development trust fund is available to the board of university and school lands for loans under this section.
2. To be eligible for a loan under this section, the school district must demonstrate a need based on an unanticipated construction project, an unanticipated replacement project, ~~or~~ an emergency repair, or a legislatively defined condition, and the board of a school district shall:
  - a. Obtain the approval of the superintendent of public instruction for the construction project under section 15.1-36-01; and
  - b. Submit to the superintendent of public instruction an application containing all information deemed necessary by the superintendent, including potential alternative sources or methods of financing the construction project.
3. The superintendent of public instruction shall consider each loan application in the order ~~it~~ the application received approval under section 15.1-36-01.

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<sup>17</sup> Section 15.1-36-02 was also amended by section 27 of Senate Bill No. 2015, chapter 47.

4. If the superintendent of public instruction approves the loan, the board of university and school lands shall issue a loan from the coal development trust fund.
  - a. For a loan made under this section subsection:
    - a.(1) The minimum loan amount is two hundred fifty thousand dollars and the maximum loan amount for which a school district may qualify is ~~two~~five million dollars;
    - b.(2) The term of the loan is twenty years, unless the board of the school district requests a shorter term in the written loan application; and
    - e.(3) The interest rate of the loan may not exceed two percent per year.
  - b. During the 2023-25 biennium, a loan including additional expenses due to unanticipated construction inflation is an allowable condition under subsection 2. For a loan made under this subsection which includes additional expenses due to unanticipated construction inflation:
    - (1) The unanticipated construction inflation must have occurred for a construction project bid after January 1, 2021, and before June 30, 2024;
    - (2) The maximum loan amount for which a school district may qualify is five million dollars;
    - (3) The interest rate on the loan may not exceed two percent per year;
    - (4) The term of the loan is twenty years, unless the board of the school district requests a shorter term in the written loan application; and
    - (5) The school district may pledge revenues derived from its general fund levy authority or other sources of revenue authorized by law.
5. a. If a school district seeking a loan under this section received an allocation of the oil and gas gross production tax during the previous fiscal year in accordance with chapter 57-51, the board of the district shall provide to the board of university and school lands, and to the state treasurer, its evidence of indebtedness indicating that the loan originated under this section.
  - b. If the evidence of indebtedness is payable solely from the school district's allocation of the oil and gas gross production tax in accordance with section 57-51-15, the loan does not constitute a general obligation of the school district and may not be considered a debt of the district.
  - c. If a loan made to a school district is payable solely from the district's allocation of the oil and gas gross production tax in accordance with section 57-51-15, the terms of the loan must require that the state treasurer withhold the dollar amount or percentage specified in the loan agreement, from each of the district's oil and gas gross production tax allocations, in order to repay the principal and interest of the evidence of indebtedness. The state treasurer shall deposit the amount withheld into the fund from which the loan originated.

- d. Any evidence of indebtedness executed by the board of a school district under this subsection is a negotiable instrument and not subject to taxation by the state or any political subdivision of the state.
6. For purposes of this section, a "construction project" means the purchase, lease, erection, or improvement of any structure or facility by a school board, provided the acquisition or activity is within a school board's authority.

<sup>18</sup> **SECTION 27. AMENDMENT.** Section 15.1-36-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-36-02. Coal development trust fund - Board of university and school lands - School construction projects - Unanticipated construction projects and emergency repairs - Loans.**

1. Up to sixty million dollars from the coal development trust fund is available to the board of university and school lands for loans under this section.
2. To be eligible for a loan under this section, the school district must demonstrate a need based on an unanticipated construction project, an unanticipated replacement project, an emergency repair, or a legislatively defined condition, and the board of a school district shall:
  - a. Obtain the approval of the superintendent of public instruction for the construction project under section 15.1-36-01; and
  - b. Submit to the superintendent of public instruction an application containing all information deemed necessary by the superintendent, including potential alternative sources or methods of financing the construction project.
3. The superintendent of public instruction shall consider each loan application in the order the application received approval under section 15.1-36-01.
4. If the superintendent of public instruction approves the loan, the board of university and school lands shall issue a loan from the coal development trust fund.
  - a. For a loan made under this ~~subsection~~section:
    - (1)a. The minimum loan amount is two hundred fifty thousand dollars and the maximum loan amount for which a school district may qualify is five million dollars;
    - (2)b. The term of the loan is twenty years, unless the board of the school district requests a shorter term in the written loan application; and
    - (3)c. The interest rate of the loan may not exceed two percent per year.
  - b. ~~During the 2023-25 biennium, a loan including additional expenses due to unanticipated construction inflation is an allowable condition under subsection 2 of this section. For a loan made under this subsection which includes additional expenses due to unanticipated construction inflation:~~

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<sup>18</sup> Section 15.1-36-02 was also amended by section 26 of Senate Bill No. 2015, chapter 47.

- ~~(1) The unanticipated construction inflation must have occurred for a construction project bid after January 1, 2021, and before June 30, 2024;~~
  - ~~(2) The maximum loan amount for which a school district may qualify is five million dollars;~~
  - ~~(3) The interest rate on the loan may not exceed two percent per year;~~
  - ~~(4) The term of the loan is twenty years, unless the board of the school district requests a shorter term in the written loan application; and~~
  - ~~(5) The school district may pledge revenues derived from its general fund levy authority or other sources of revenue authorized by law.~~
5. a. If a school district seeking a loan under this section received an allocation of the oil and gas gross production tax during the previous fiscal year in accordance with chapter 57-51, the board of the district shall provide to the board of university and school lands, and to the state treasurer, its evidence of indebtedness indicating the loan originated under this section.
  - b. If the evidence of indebtedness is payable solely from the school district's allocation of the oil and gas gross production tax in accordance with section 57-51-15, the loan does not constitute a general obligation of the school district and may not be considered a debt of the district.
  - c. If a loan made to a school district is payable solely from the district's allocation of the oil and gas gross production tax in accordance with section 57-51-15, the terms of the loan must require the state treasurer withhold the dollar amount or percentage specified in the loan agreement, from each of the district's oil and gas gross production tax allocations, in order to repay the principal and interest of the evidence of indebtedness. The state treasurer shall deposit the amount withheld into the fund from which the loan originated.
  - d. Any evidence of indebtedness executed by the board of a school district under this subsection is a negotiable instrument and not subject to taxation by the state or any political subdivision of the state.
6. For purposes of this section, a "construction project" means the purchase, lease, erection, or improvement of any structure or facility by a school board, provided the acquisition or activity is within a school board's authority.

**SECTION 28. AMENDMENT.** Section 15.1-36-04 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-36-04. Evidences of indebtedness.**

~~The~~Except as otherwise provided in this chapter, the board of a school district may issue and sell evidences of indebtedness under chapter 21-02 or 21-03 to finance the construction or improvement of a project approved under this chapter. The principal amount of the loan and the evidences of indebtedness to repay the loan may not exceed the loan amount for which the district is eligible under this chapter. Evidences of indebtedness issued under this chapter or chapter 21-03 constitute a general obligation of the school district.

<sup>19</sup> **SECTION 29. AMENDMENT.** Subsection 2 of the new section to chapter 19-03.1 of the North Dakota Century Code, as created by section 1 of Senate Bill No. 2248, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

2. An individual is guilty of causing death or injury by distributing a controlled substance if the individual willfully ~~supplies another to deliver a controlled substance to an individual who consumes the controlled substance and that delivers a controlled substance, or supplies another to deliver or consume a controlled substance, and an~~ individual dies or is injured from overdosing after consuming a portion of ~~the~~that controlled substance.
  - a. A violation of this section is a class A felony.
  - b. This section does not limit a conviction under chapter 12.1-16, but an individual may not be found guilty of this section and an offense under chapter 12.1-16 if the conduct arises out of the same course of conduct.

**SECTION 30. AMENDMENT.** Subsection 1 of section 21-10-12 of the North Dakota Century Code, as amended in section 3 of Senate Bill No. 2330, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

1. "Earnings" means an amount equal to ~~seven~~eight percent of the five-year average value of the legacy fund assets as reported by the state investment board using the value of the assets at the end of each fiscal year for the five-year period ending with the most recently completed even-numbered fiscal year.

<sup>20</sup> **SECTION 31. AMENDMENT.** Section 24-02-37.3 of the North Dakota Century Code, as amended by section 10 of House Bill No. 1012, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

**SECTION 10. AMENDMENT.** Section 24-02-37.3 of the North Dakota Century Code as created by section 1 of Senate Bill No. 2113, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

**24-02-37.3. Flexible transportation fund - Budget section approval - Report.**

There is created in the state treasury the flexible transportation fund. The fund consists of eligible federal or state funding and any contributed private funds.

1. The flexible transportation fund must be administered and expended by the director and may be used for the following:
  - a. Providing a match for federal funding obtained by the department of transportation.

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<sup>19</sup> Section 19-03.1-22.6 was created by section 1 of Senate Bill No. 2248, chapter 209.

<sup>20</sup> Section 24-02-37.3 was created by section 1 of Senate Bill No. 2113, chapter 266, and was also amended by section 10 of House Bill No. 1012, chapter 12.

- b. State-funded road and bridge construction and maintenance, and transportation support costs including staffing, facilities, and operational expenditures on the state highway system.
    - c. State-funded road and bridge construction and maintenance activities within the state but off of the state highway system. The director shall establish the terms and provisions of the program.
2. All money derived from the investment of the flexible transportation fund or any portion of the fund, must be credited to the flexible transportation fund. The director shall monthly transmit all moneys collected and received under this chapter to the state treasurer to be transferred and credited to the flexible transportation fund.
3. The director must receive budget section approval for any project that utilizes more than ~~fifteen~~ million dollars from the fund except for projects that match federal or private funds and the amount utilized from the fund is fifty percent or less of total project costs. Any request considered by the budget section must comply with section 54-35-02.9.
4. The director shall allocate at least twenty-five percent of motor vehicle excise tax collections deposited in the flexible transportation fund pursuant to section 57-40.3-10 for non-oil-producing county and township road and bridge projects as follows:
  - a. The funds must be allocated by the department to counties for projects or grants for the benefit of counties and organized and unorganized townships;
  - b. The department shall establish criteria to distribute the funds;
  - c. The funds must be used for the maintenance and improvement of county and township paved and unpaved roads and bridges;
  - d. Priority must be given to projects that match federal funds and to projects that improve roadways that serve as local corridors;
  - e. An organized township is not eligible to receive funding if the township does not maintain any roadways or does not levy at least eighteen mills for general purposes; and
  - f. For purposes of this subsection, "non-oil-producing county" means a county that received no allocation of funding or a total allocation of less than five million dollars under subsection 2 of section 57-51-15 in the most recently completed even-numbered fiscal year before the start of each biennium.
5. The director shall provide periodic reports to the budget section regarding the status of the fund and projects receiving allocations from the fund.

**SECTION 32. AMENDMENT.** Section 48-10-02 of the North Dakota Century Code is amended and reenacted as follows:

**48-10-02. Capitol building fund to be administered by the capitol grounds planning commission - Continuing appropriation - Procedure for expenditure of certain funds.**

1. The capitol grounds planning commission shall have general powers to superintend the administration of the capitol building fund, its interest and income fund, and its investments and properties. It may cause any lands now held in such funds to be sold at market value, direct the conversion of any securities now held by such funds to cash, approve expenditures from such funds subject to law and legislative appropriations, and to do all other things necessary to carry out the intent and purposes of this section. The board of university and school lands or its designee, on the commission's behalf, shall see to the investment and management of the capitol building fund and its interest and income fund and shall account to the commission concerning these funds at the commission's request.
2. Provided further, all moneys and other property in the capitol building fund, except as otherwise appropriated, are hereby dedicated and reserved to the exclusive purpose of the construction of an addition to the legislative wing of the state capitol building, and the capitol grounds planning commission shall take necessary steps to accumulate and conserve the money and property in the capitol building fund for such purpose.
3. The commission may, during any biennium, expend from the interest and income fund of the capitol building fund a sum not to exceed fifty percent of the unencumbered balance on the first day of any biennium, and such amount is hereby appropriated to the capitol grounds planning commission. The expenditure may be made, after consideration of the capitol grounds master plan, for projects or planning related to remodeling expenses but may not exceed two hundred fifty thousand dollars per biennium. The expenditure may only be made upon approval by two-thirds of the total membership of the commission. The expenditure must be made upon a voucher, or vouchers, prepared by the office of management and budget at the direction of the commission.

**SECTION 33. AMENDMENT.** Section 54-06-14.7 of the North Dakota Century Code is amended and reenacted as follows:

**54-06-14.7. State leave sharing program - Rulemaking.**

1. The human resource management services division of the office of management and budget shall establish a state leave sharing program for permanent employees of the state. The program must provide for a mechanism for state employees to donate accrued annual and sick leave to an employee who does not have available leave who is suffering from a severe, extreme, or life-threatening condition or who is caring for an immediate relative or household member who is suffering from a severe, extreme, or life-threatening condition.
2. A probationary, temporary, employee or contracted employee with a limited-term appointment is not eligible to participate in the leave sharing program. An employee may not use more than four months donated leave in any twelve-month period and an employee may not retain leave beyond the occurrence necessitating the leave.
3. The human resource management services division shall:

- a. Require medical certification from a physician, physician assistant, psychologist, or advanced practice nurse practitioner verifying the severe, extreme, or life-threatening nature of the medical condition and the expected duration of the condition;
- b. Track the amount of leave taken by permanent state employees under the program; and
- c. Adopt rules in accordance with chapter 28-32 to implement this section.

**SECTION 34. AMENDMENT.** Section 54-21-19 of the North Dakota Century Code is amended and reenacted as follows:

**54-21-19. Director to furnish supplies and maintain capitol, state offices, and executive mansion - Authority to charge for services.**

The director of the office of management and budget shall provide all necessary fuel, electricity, insurance, janitorial, and other services necessary to maintain the state offices on the capitol grounds as well as all necessary furniture, fuel, electricity, express, freight, drayage, and all other necessary supplies for the executive mansion and the capitol grounds and shall make all necessary repairs. The purchases must be in accordance with chapter 54-44.4. The director shall charge an amount equal to the fair value of the office space and other services rendered to all departments that receive and expend moneys from other than the general fund executive branch agencies, except that for good cause the amounts charged may be waived by the director for a one-year period of time with the waiver subject to further annual renewals after proper application has been filed with the director.

**SECTION 35.** A new subsection to section 54-44-11 of the North Dakota Century Code is created and enacted as follows:

The office of management and budget shall establish a facility management operating fund to be used for the salary and operating expenses of the division of facility management. Rental fees collected pursuant to section 54-21-19 must be deposited in the fund. The director of the office of management and budget shall transfer any unobligated balance in the fund to the general fund at the end of each fiscal year.

<sup>21</sup> **SECTION 36. AMENDMENT.** Section 54-52-02.5 of the North Dakota Century Code, as amended in section 3 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

**54-52-02.5. Newly elected and appointed state officials.**

1. After December 31, 1999, but before January 1, ~~2025~~2024, an individual elected or appointed to a state office for the first time must, from and after the date that individual qualifies and takes office, be a participating member of the public employees retirement system unless that person makes an election at any time during the first six months after the date the person takes office to participate in the defined contribution retirement plan established under chapter 54-52.6.

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<sup>21</sup> Section 54-52-02.5 was also amended by section 3 of House Bill No. 1040, chapter 514.

2. After December 31, ~~2024~~2023, an individual elected or appointed to a state office for the first time, from and after the date that individual qualifies and takes office, must be a participating member of the defined contribution retirement plan established under chapter 54-52.6, unless at the time of election or appointment the individual is a participating or deferred member under this chapter, in which case the official remains a participating member under this chapter.
3. As used in this section, the phrase "for the first time" means an individual appointed, who, after December 31, 1999, does not hold office as an appointed official at the time of that individual's appointment.

<sup>22</sup> **SECTION 37. AMENDMENT.** Section 54-52-02.9 of the North Dakota Century Code, as amended in section 4 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

**54-52-02.9. Participation by temporary employees.**

1. Before January 1, ~~2025~~2024, within one hundred eighty days of beginning employment, a temporary employee may elect to participate in the public employees retirement system under this chapter and receive credit for service after enrollment. Monthly, the temporary employee shall pay to the fund an amount equal to fourteen and twelve hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by one percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January ~~2025~~2024.
2. If the temporary employee first enrolled:
  - a. Before January 1, 2020, in addition the temporary employee shall pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2.
  - b. After December 31, 2019, the temporary employee shall pay to the fund an additional amount equal to one and fourteen hundredths percent times the temporary employee's present monthly salary.
3. A temporary employee who is a participating member under this chapter due to employment before January 1, ~~2025~~2024, who becomes a permanent employee after December 31, ~~2024~~2023, qualifies to participate in the defined benefit retirement plan under this chapter and receive credit for service after enrollment.
4. After December 31, ~~2024~~2023, and within one hundred eighty days of beginning employment, a temporary employee may elect to participate in the defined contribution retirement plan under chapter 54-52.6.
5. 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

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<sup>22</sup> Section 54-52-02.9 was also amended by section 4 of House Bill No. 1040, chapter 514.

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.

<sup>23</sup> **SECTION 38. AMENDMENT.** Section 54-52-02.11 of the North Dakota Century Code, as amended in section 5 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

**54-52-02.11. Participation requirements for nonstate elected officials.**

1. Before January 1, ~~2025~~2024, eligible elected officials of participating counties, at their individual option, may enroll in the defined benefit plan within the first six months of their term.
2. After December 31, ~~2024~~2023, eligible elected officials of participating counties, at their individual option, may enroll in the defined contribution retirement plan under chapter 54-52.6 within the first six months of their term.

<sup>24</sup> **SECTION 39. AMENDMENT.** Section 54-52-02.12 of the North Dakota Century Code, as amended in section 6 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

**54-52-02.12. Participation requirements for nonstate appointed officials.**

1. Nonstate appointed officials of participating employers appointed on or after August 1, 1999, but before January 1, ~~2025~~2024, who meet the participation requirements of this chapter must be enrolled in the defined benefit plan effective within the first month of taking office.
2. After December 31, ~~2024~~2023, nonstate appointed officials of participating employers who meet the participation requirements must be enrolled in the defined contribution retirement plan under chapter 54-52.6 effective within the first month of taking office.

<sup>25</sup> **SECTION 40. AMENDMENT.** Section 54-52-02.15 of the North Dakota Century Code, as created in section 7 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

**54-52-02.15. Public employees retirement system main plan - Closure to new hires - Multiple plan membership.**

1. Under this section "eligible employee" means a permanent employee who:
  - a. Meets all the eligibility requirements set by this chapter;
  - b. Is at least eighteen years of age;
  - c. Becomes a participating member after December 31, ~~2024~~2023; and

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<sup>23</sup> Section 54-52-02.11 was also amended by section 5 of House Bill No. 1040, chapter 514.

<sup>24</sup> Section 54-52-02.12 was also amended by section 6 of House Bill No. 1040, chapter 514.

<sup>25</sup> Section 54-52-02.15 was created by section 7 of House Bill No. 1040, chapter 514.

- d. Is not eligible to participate in the law enforcement plan, judges' plan, highway patrol plan, teachers' fund for retirement plan, or alternative retirement program established under section 15-10-17 for university system employees.
2. Effective January 1, ~~2025~~2024, the public employees retirement system defined benefit main plan maintained for employees is closed to new eligible employees. However, an employee who becomes a participating or deferred member under this chapter before January 1, ~~2025~~2024, remains in the defined benefit retirement plan under this chapter, regardless of being rehired after December 31, ~~2024~~2023.
3. Except as otherwise provided under this section, effective January 1, ~~2025~~2024, an eligible employee who begins employment with an employer shall participate in the defined contribution retirement plan under chapter 54-52.6 as provided under section 54-52.6-02.1.
4. This section does not impact an employee to the extent the employee is a participating member in one or more of the following enumerated plans: law enforcement plan, judges' plan, highway patrol plan, teachers' fund for retirement plan, or alternative retirement program established under section 15-10-17 for university system employees.
  - a. A participating or deferred member in the defined contribution retirement plan under chapter 54-52.6 who becomes eligible to participate in a plan enumerated under this subsection is eligible to participate in the retirement plan enumerated under this subsection.
  - b. A participating member of a retirement plan enumerated under this subsection who becomes an eligible employee is not eligible to participate in the defined benefit retirement plan under this chapter but instead participates in the defined contribution retirement plan under chapter 54-52.6. However, this subdivision does not apply to an individual who before January 1, ~~2025~~2024, is a participating or a deferred member under this chapter, as that individual continues to participate in the defined benefit retirement plan under this chapter.
5. The board shall adopt rules to implement this section.

**SECTION 41. AMENDMENT.** Section 54-52-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-03. Governing authority.**

1. A state agency is hereby created to constitute the governing authority of the system to consist of a board of ~~nine~~eleven individuals known as the retirement board. No more than one elected member of the board may be in the employ of a single department, institution, or agency of the state or in the employ of a political subdivision. An employee of the public employees retirement system or the state retirement and investment office may not serve on the board.
- ~~1.~~ Two
2. ~~Four~~ members of the legislative assembly must be appointed by the chairman of the legislative management to serve on the board.

- a. ~~If the same political party has the greatest number of members in both the house and senate, one member must be from that majority party and one member from the political party with the next greatest number of members in the house and senate.~~
  - b. ~~If the same political party does not have the greatest number of members in both the house and senate, one member must be from the majority party in the house and one member must be from the majority party in the senate.~~
2. ~~One member~~ The majority leader of the house of representatives shall appoint two members of the house of representatives and the majority leader of the senate shall appoint two members of the senate. The members appointed under this subsection shall serve a term of two years.
  3. Four members of the board must be appointed by the governor to serve a term of five years. ~~The~~Each appointee under this subsection must be a North Dakota citizen who is not a state or political subdivision employee and who by experience is familiar with ~~money management retirement and employee benefit plans.~~ The governor shall appoint one citizen member ~~is to serve as chairman of the board.~~
  3. ~~One member of the board must be appointed by the attorney general from the attorney general's legal staff and shall serve a term of five years.~~
  4. ~~The state health officer appointed under section 23-01-05 or the state health officer's designee is a member of the board.~~
- 5.4. 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.
  6. ~~One board member must be elected by and from among those individuals who are receiving retirement benefits under this chapter. The board shall call the election and must give prior notice of the election to the individuals eligible to participate in the election pursuant to this subsection. The board member shall serve a term of five years.~~
  - 7.5. The members of the board are entitled to receive one hundred forty-eight dollars per day compensation and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09. This is in addition to any other pay or allowance due the chairman or a member, plus an allowance for expenses they may incur through service on the board.
  - 8.6. A board member shall serve ~~a five-year term and~~ until the board member's successor qualifies. Each board member is entitled to one vote, and ~~five~~six of

the ~~nine~~eleven board members constitute a quorum. ~~Five~~Six votes are necessary for resolution or action by the board at any meeting.

<sup>26</sup> **SECTION 42. AMENDMENT.** Subsection 2 of section 54-52-06.4 of the North Dakota Century Code, as amended in section 1 of House Bill No. 1309, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

2. The employer of a peace officer employed by the ~~bureau of criminal investigation~~state or national guard security officer 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 or security 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 or security officer's assessment.

<sup>27</sup> **SECTION 43. AMENDMENT.** Subsection 4 of section 54-52-17 of the North Dakota Century Code, as amended in section 4 of House Bill No. 1183, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

4. The board shall calculate retirement benefits as follows:
  - a. Normal retirement benefits for all retirees, except supreme and district court judges, peace officers employed by the bureau of criminal investigation, and other peace officers employed by the state, reaching normal retirement date equal an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which is determined as follows:
    - (1) ~~For members first enrolled:~~
      - (a) ~~Before January 1, 2020, service benefit equals two percent of final average salary multiplied by the number of years of service employment.~~
      - (b) ~~After December 31, 2019, service benefit equals one and seventy-five hundredths percent of final average salary multiplied by the number of years of service employment. The first twenty years of credited service multiplied by three percent of final average salary.~~
    - (2) ~~Prior service benefit equals two percent of final average salary multiplied by the number of years of prior service employment. For years in excess of twenty years of credited service multiplied by one and seventy-five hundredths percent of final average salary.~~

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<sup>26</sup> Section 54-52-06.4 was also amended by section 2 of House Bill No. 1183, chapter 513, and section 1 of House Bill No. 1309, chapter 515.

<sup>27</sup> Section 54-52-17 was also amended by section 3 of House Bill No. 1183, chapter 513, section 4 of House Bill No. 1183, chapter 513, section 2 of House Bill No. 1309, chapter 515, section 3 of House Bill No. 1309, chapter 515, and section 4 of House Bill No. 1309, chapter 515.

- b. Normal retirement benefits for all supreme and district court judges under the public employees retirement system reaching normal retirement date equal an annual amount, payable monthly, comprised of a benefit as defined in this chapter, determined as follows:
  - (1) Benefits must be calculated from the time of appointment or election to the bench and must equal three and one-half percent of final average salary multiplied by the first ten years of judicial service, two and eighty hundredths percent of final average salary multiplied by the second ten years of judicial service, and one and one-fourth percent of final average salary multiplied by the number of years of judicial service exceeding twenty years.
  - (2) Service benefits must include, in addition, an amount equal to the percent specified in subdivision a of final average salary multiplied by the number of years of nonjudicial employee service and employment.
- c. Normal retirement benefits for a peace officer employed by the bureau of criminal investigation reaching the normal retirement date equals an annual amount, payable monthly, comprised of a service benefit and a prior service benefit determined as follows:
  - (1) For members first enrolled:
    - (a) Before January 1, 2020, service benefit equals two percent of final average salary multiplied by the number of years of service employment.
    - (b) After December 31, 2019, service benefit equals one and seventy-five hundredths percent of final average salary multiplied by the number of years of service employment.
  - (2) Prior service benefit equals two percent of final average salary multiplied by the number of years of prior service employment.
- d. Normal retirement benefits for a peace officer employed by the state, other than by the bureau of criminal investigation, reaching the normal retirement date equals an annual amount, payable monthly, comprised of a service benefit and a prior service benefit determined as follows:
  - (1) For members first enrolled:
    - (a) Before January 1, 2020, service benefit equals two percent of final average salary multiplied by the number of years of service employment.
    - (b) After December 31, 2019, service benefit equals one and seventy-five hundredths percent of final average salary multiplied by the number of years of service employment.
  - (2) Prior service benefit equals two percent of final average salary multiplied by the number of years of prior service employment.
- e. Postponed retirement benefits are calculated as for single life benefits for those members who retired on or after July 1, 1977.

- f. Early retirement benefits are calculated as for single life benefits accrued to the date of termination of employment, but must be actuarially reduced to account for benefit payments beginning before the normal retirement date, as determined under subsection 3. Except for a national guard security officer or firefighter, a firefighter, peace officer, or correctional officer employed by a political subdivision, a peace officer employed by the state, or a supreme court or district court judge, early retirement benefits for members first enrolled after December 31, 2015, are calculated for single life benefits accrued to the date of termination of employment, but must be reduced by fixed rate of eight percent per year to account for benefit payments beginning before the normal retirement date. A retiree, other than a supreme or district court judge, is eligible for early retirement benefits only after having completed three years of eligible employment. A supreme or district court judge retiree is eligible for early retirement benefits only after having completed five years of eligible employment.
- g. Except for supreme and district court judges, disability retirement benefits are twenty-five percent of the member's final average salary. Disability retirement benefits for supreme and district court judges are seventy percent of final average salary reduced by the member's primary social security benefits and by any workforce safety and insurance benefits paid. The minimum monthly disability retirement benefit under this section is one hundred dollars.

<sup>28</sup> **SECTION 44. AMENDMENT.** Section 54-52.2-09 of the North Dakota Century Code, as created in section 13 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

**54-52.2-09. Employer match for members of defined contribution retirement plan.**

An employee who first participated in the defined contribution retirement plan under chapter 54-52.6 after December 31, ~~2024~~2023, who elects to contribute less than the optional three percent of wages or salary under subdivision b of subsection 1 of section 54-52.6-09, who participates in the deferred compensation program under this chapter, qualifies for employer matching of contributions made under this section. The employee may elect to contribute an amount of wages or salary which does not exceed any remaining balance of the optional three percent contribution and the employer shall match this contribution. This section does not limit the ability of an employee to contribute unmatched wages or salary under this chapter, subject to federal contribution limitations.

<sup>29</sup> **SECTION 45. AMENDMENT.** Subsection 3 of section 54-52.6-01 of the North Dakota Century Code, as amended in section 14 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

3. "Eligible employee", for employees who become participating members after December 31, ~~2024~~2023, has the same meaning as provided under section 54-52-02.15. For employees who elected to join the defined contribution retirement plan under this chapter before January 1, ~~2025~~2024, the term includes a permanent state employee, except an employee of the judicial

<sup>28</sup> Section 54-52.2-09 was created by section 13 of House Bill No. 1040, chapter 514.

<sup>29</sup> Section 54-52.6-01 was also amended by section 14 of House Bill No. 1040, chapter 514.

branch or an employee of the board of higher education and state institutions under the jurisdiction of the board of higher education, who is at least eighteen years of age and who is in a position not classified by the North Dakota human resource management services.

<sup>30</sup> **SECTION 46. AMENDMENT.** Section 54-52.6-02 of the North Dakota Century Code, as amended in section 15 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

**54-52.6-02. Election through December 31, ~~2024~~2023.**

1. The board shall provide an opportunity for each eligible employee who is a member of the public employees retirement system on September 30, 2001, and who has not made a written election under this section to transfer to the defined contribution retirement plan before October 1, 2001, to elect in writing to terminate membership in the public employees retirement system and elect to become a participating member under this chapter. Except as provided in section 54-52.6-03, an election made by an eligible employee under this section is irrevocable. The board shall accept written elections under this section from eligible employees during the period beginning on July 1, 1999, and ending 12:01 a.m. December 14, 2001. An eligible employee who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. An eligible employee who makes and files a written election under this section ceases to be a member of the public employees retirement system effective twelve midnight December 31, 2001; becomes a participating member in the defined contribution retirement plan under this chapter effective 12:01 a.m. January 1, 2002; and waives all of that person's rights to a pension, annuity, retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective December 31, 2001. This section does not affect an individual's right to health benefits or retiree health benefits under chapter 54-52.1. An eligible employee who is first employed and entered upon the payroll of that person's employer after September 30, 2001, and before January 1, ~~2025~~2024, may make an election to participate in the defined contribution retirement plan established under this chapter at any time during the first six months after the date of employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window.
2. If an individual who is a deferred member of the public employees retirement system on September 30, 2001, is re-employed before January 1, ~~2025~~2024, and by virtue of that employment is again eligible for membership in the public employees retirement system under chapter 54-52, the individual may elect in writing to remain a member of the public employees retirement system or if eligible to participate in the defined contribution retirement plan established under this chapter to terminate membership in the public employees retirement system and become a participating member in the defined contribution retirement plan established under this chapter. An election made by a deferred member under this section is irrevocable. The board shall accept written elections under this section from a deferred member during the

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<sup>30</sup> Section 54-52.6-02 was also amended by section 15 of House Bill No. 1040, chapter 514.

period beginning on the date of the individual's re-employment and ending upon the expiration of six months after the date of that re-employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window. A deferred member who makes and files a written election to remain a member of the public employees retirement system retains all rights and is subject to all conditions as a member of that retirement system. A deferred member who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. A deferred member who makes and files a written election to terminate membership in the public employees retirement system ceases to be a member of the public employees retirement system effective on the last day of the payroll period that includes the date of the election; becomes a participating member in the defined contribution retirement plan under this chapter effective the first day of the payroll immediately following the date of the election; and waives all of that person's rights to a pension, an annuity, a retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective the last day of the payroll that includes the date of the election. This section does not affect any right to health benefits or retiree health benefits to which the deferred member may otherwise be entitled.

3. An eligible employee who elects under this section to participate in the retirement plan established under this chapter must remain a participant even if that employee returns to the classified service or becomes employed by a political subdivision that participates in the public employees retirement system. The contribution amount must be as provided in this chapter, regardless of the position in which the employee is employed. Notwithstanding the irrevocability provisions of this chapter, if a member who elects to participate in the retirement plan established under this chapter becomes a supreme or district court judge, becomes a member of the highway patrol, becomes employed in a position subject to teachers' fund for retirement membership, or becomes an employee of the board of higher education or state institution under the jurisdiction of the board of higher education who is eligible to participate in an alternative retirement program established under subsection 6 of section 15-10-17, the member's status as a member of the defined contribution retirement plan is suspended, and the member becomes a new member of the retirement plan for which that member's new position is eligible. The member's account balance remains in the defined contribution retirement plan, but no new contributions may be made to that account. The member's service credit and salary history that were forfeited as a result of the member's transfer to the defined contribution retirement plan remain forfeited, and service credit accumulation in the new retirement plan begins from the first day of employment in the new position. If the member later returns to employment that is eligible for the defined contribution retirement plan, the member's suspension must be terminated, the member again becomes a member of the defined contribution retirement plan, and the member's account resumes accepting contributions. At the member's option, and pursuant to rules adopted by the board, the member may transfer any available balance as determined by the provisions of the alternate retirement plan into the member's account under this chapter.

4. After consultation with its actuary, the board shall determine the method by which a participating member or deferred member may make a written election under this section. If the participating member or deferred member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.
5. If the board receives notification from the internal revenue service that this section or any portion of this section will cause the public employees retirement system or the retirement plan established under this chapter to be disqualified for tax purposes under the Internal Revenue Code, then the portion that will cause the disqualification does not apply.
6. A participating member under this section who becomes a temporary employee may still participate in the defined contribution retirement plan upon filing an election with the board within one hundred eighty days of transferring to temporary employee status. The participating member may not become a member of the defined benefit plan as a temporary employee.
  - a. The temporary employee electing to participate in the defined contribution retirement plan shall pay into the plan as provided under section 54-52.6-09.6.
  - b. An employer may not pay the temporary employee's contributions.
  - c. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.
7. A former participating member under this section who has accepted a retirement distribution pursuant to section 54-52.6-13 and who subsequently becomes employed by an entity different from the employer with which the member was employed at the time the member retired but which does participate in any state-sponsored retirement plan may, before re-enrolling in the defined contribution retirement plan, elect to permanently waive future participation in the defined contribution retirement plan, whatever plan in which the new employing entity participates, and the retiree health program and maintain that member's retirement status. Neither the member nor the employer are required to make any future retirement contributions on behalf of that employee.
8. After December 31, ~~2024~~2023, an eligible employee is no longer allowed to elect participation under this section.

<sup>31</sup> **SECTION 47. AMENDMENT.** Subsection 1 of section 54-52.6-02.1 of the North Dakota Century Code, as created by section 16 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

1. Except as otherwise provided under section 54-52-02.5 or 54-52-02.15 or this chapter, effective January 1, ~~2025~~2024, an eligible employee who is first enrolled shall participate in the defined contribution retirement plan under this chapter.

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<sup>31</sup> Section 54-52.6-02.1 was created by section 16 of House Bill No. 1040, chapter 514.

<sup>32</sup> **SECTION 48. AMENDMENT.** Section 54-52.6-02.2 of the North Dakota Century Code, as created by section 17 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

**54-52.6-02.2. Election after December 31, 2024~~2023~~ - Additional employer contribution.**

1. As used in this section, "eligible employee" means a permanent state employee who on December 31, 2024~~2023~~, is a participating member of the public employees retirement system main system plan under chapter 54-42, who has been a participating member under chapter 54-52 for no more than five years, and who is at least eighteen years of age.
2. The board shall provide a three-month election period, from January 1, 2025~~2024~~, through March 31, 2025~~2024~~, for an eligible employee to transfer to the defined contribution plan under this chapter pursuant to the rules and policies adopted by the board.
  - a. An election under this section made by a member of the public employees retirement system under chapter 54-52 to transfer to the defined contribution retirement plan under this chapter is irrevocable.
  - b. For an eligible employee who elects to transfer from the public employees retirement system under chapter 54-52 to the defined contribution retirement plan under this chapter, the board shall transfer a lump sum amount from the public employees retirement system fund to the member's account in the defined contribution retirement plan under this chapter. However, if the eligible employee terminates employment before receiving the lump sum transfer under this section, the election made is ineffective and the eligible employee remains a member of the public employees retirement system under chapter 54-52 and retains all the rights and privileges under that chapter.
  - c. The board shall calculate the lump sum amount to be transferred based on the actuarial present value of the eligible employee's accumulated benefit obligation under the public employees retirement system based on the assumption the eligible employee will retire under the earlier applicable normal retirement age, plus interest from January 1, 2025~~2024~~, to the date of transfer, at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election.
  - d. This section does not affect an eligible individual's right to health benefits under chapter 54-52.1.
3. The state employer of an eligible employee who elects under this section to participate in the defined contribution retirement plan under this chapter shall pay an additional annual contribution of three thousand three hundred and thirty-three dollars for up to three years. Under this subsection, the employer shall pay the additional contribution each year the eligible employee continues permanent employment with the state, beginning January 2026~~2025~~, and extending no further than January 2028~~2027~~.

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<sup>32</sup> Section 54-52.6-02.2 was created by section 17 of House Bill No. 1040, chapter 514.

4. If the board receives notification from the internal revenue service that this section or any portion of this section will cause the public employees retirement system or the retirement plan established under this chapter to be disqualified for tax purposes under the Internal Revenue Code, that portion that will cause the disqualification does not apply.

<sup>33</sup> **SECTION 49. AMENDMENT.** Subsection 2 of section 54-52.6-03 of the North Dakota Century Code, as amended by section 18 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

2. The board shall calculate the amount to be transferred for persons employed after September 30, 2001, and before January 1, ~~2025~~2024, using only the formula contained in subdivision b of subsection 1.

<sup>34</sup> **SECTION 50. AMENDMENT.** Section 54-52.6-09 of the North Dakota Century Code, as amended in section 22 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

**54-52.6-09. Contributions - Penalty.**

1. a. A participating member who first joined the defined contribution retirement plan before January 1, ~~2025~~2024, and an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2, shall contribute monthly seven percent of the monthly salary or wage paid to the participant.
- b. A participating member who first joined the defined contribution retirement plan after December 31, ~~2024~~2023, except for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2, shall contribute monthly four percent of the monthly salary or wage paid to the participant. In addition, the participating member may elect to contribute monthly up to an additional three percent of the monthly salary or wage paid to the participant.
- c. This assessment must be deducted from the participant's salary in equal monthly installments commencing with the first month of participation in the defined contribution retirement plan established under this chapter.
2. a. For a participating member who first joined the defined contribution retirement plan before January 1, ~~2025~~2024, and for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2, the employer shall contribute an amount equal to seven and twelve-hundredths percent of the monthly salary or wage of the participating member.
- b. For a participating member who first joined the defined contribution retirement plan after December 31, ~~2024~~2023, except for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2, the employer shall contribute an amount equal to four and

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<sup>33</sup> Section 54-52.6-03 was also amended by section 18 of House Bill No. 1040, chapter 514.

<sup>34</sup> Section 54-52.6-09 was also amended by section 22 of House Bill No. 1040, chapter 514.

- twelve-hundredths percent of the monthly salary or wage of a participating member, plus up to an additional three percent as an employer matching contribution calculated based on the participating member's election under subdivision b of subsection 1.
- c. For a participating member first enrolled after December 31, 2019, the employer contribution includes an additional increase of one and fourteen-hundredths percent.
  - d. If the employee's contribution is paid by the employer under subsection 3, the employer shall contribute, in addition, an amount equal to the required employee's contribution. Monthly, the employer shall pay such contribution into the participating member's account from the employer's funds appropriated for payroll and salary or any other funds available for such purposes.
  - e. If the employer fails to pay the contributions monthly, or fails to otherwise comply with the board's established wage reporting or payroll reporting process requirements, the employer is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction of a month after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.
3. Each employer, at its option, may pay the employee contributions required by this section for all compensation earned after December 31, 1999. The amount paid must be paid by the employer in lieu of contributions by the employee. If the employer decides not to pay the contributions, the amount that would have been paid will 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. Contributions paid by the employer may not be included as gross income of the employee in determining tax treatment under this code and the federal 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. 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 combination of a reduction in gross salary and offset against future salary increases. Employee contributions paid by the employer must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made before the date on which employee contributions were assumed by the employer. An employer shall exercise its option under this subsection by reporting its choice to the board in writing.

**SECTION 51. AMENDMENT.** Section 54-63.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-63.1-04. Clean sustainable energy authority - Duties - Report.**

1. The authority shall make recommendations to the commission for program guidelines, including eligibility criteria for entities to receive funding under this chapter.
2. The nonvoting technical advisors shall develop a process to review and evaluate projects to determine the technical merits and feasibility of any application, including potential benefits of the development of low-emission technology, the expansion of the development of the state's natural resources or energy production, and the contribution to the economic diversity in the state.
3. The authority may develop a loan program or a loan guarantee program under the clean sustainable energy fund. The Bank of North Dakota shall administer the loan program or loan guarantee program. The interest rate of a loan under this program may not exceed two percent per year. The maximum term of a loan under this section must be approved by the commission based on a recommendation from the authority. The Bank shall review applications for loans or loan guarantees and shall consider the business plan, financial statements, and other information necessary to evaluate the application. To be eligible for a loan or loan guarantee, an entity shall agree to provide the Bank of North Dakota with information as requested. The Bank of North Dakota may develop policies for loan participation with local financial institutions.
4. The authority shall make recommendations to the commission for grant awards, loan approvals, or other financial assistance to provide funding to support research, development, and technological advancements for the large scale development and commercialization of projects, processes, activities, and technologies that reduce environmental impacts and increase sustainability of energy production and delivery in accordance with this chapter. Any projects, processes, activities, and technologies selected by the commission for funding must have been recommended by the authority, must demonstrate feasibility based on a technical review conducted by the nonvoting technical advisors of the authority, must have other sources of financial support, and must achieve the priorities and purposes of the program. At the request of the authority, the Bank of North Dakota shall provide a recommendation regarding the economic feasibility of a project, process, activity, or technology under consideration by the authority. The Bank shall review the business plan, financial statements, and other information necessary to provide a recommendation.
5. The authority shall develop a fertilizer development incentive program, including guidelines to provide loan forgiveness. Funding for the fertilizer development incentive program under this subsection is limited to one hundred twenty-five million dollars.
  - a. To be eligible for the fertilizer development incentive program:
    - (1) The fertilizer production facility must be located within the state;
    - (2) The owner of the fertilizer production facility must be an entity domiciled in the United States or Canada;
    - (3) The owner must borrow money under a program administered by the Bank of North Dakota; and

(4) The fertilizer production facility must use hydrogen produced by the electrolysis of water.

b. Upon completion of the construction of the fertilizer production facility, the authority shall forgive the loan and shall use fertilizer development incentive funding to repay any outstanding amount borrowed, as certified by the Bank. The authority shall request an appropriation from the strategic investment and improvements fund or other funding sources to provide fertilizer development incentive funding to repay any outstanding amount borrowed.

6. The authority may consult with any other state agency necessary to carry out the purposes under this chapter.

~~6-7.~~ Each biennium, the authority shall provide a written report to the legislative management regarding its activities and the program's financial impact on state revenues and the state's economy.

<sup>35</sup> **SECTION 52. AMENDMENT.** The new subsection to section 61-16.1-11 of the North Dakota Century Code, as created by section 1 of Senate Bill No. 2372, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

All districts within the Red River, James River, Mouse River, Missouri River, and Devils Lake drainage basins shall, by agreement, form and remain a member of a joint water resource board relative to the district's respective drainage basin. All agreements and subsequent amendments must be filed with the department of water resources. Notwithstanding other provisions of law, the board of county commissioners of the member districts in the Red River, James River, Mouse River, Missouri River, and Devils Lake drainage basins ~~shall~~ may approve a levy of tax not to exceed two mills upon the taxable valuation of the real property within each joint board's respective drainage basin.

**SECTION 53. AMENDMENT.** Section 2 of House Bill No. 1438, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

**SECTION 2. RETROACTIVE EFFECTIVE DATE - APPLICATION.**

This Act is retroactively effective and applies for taxable years beginning after December 31, ~~2022~~2021. The limitation on time for filing an abatement claim under section 57-23-04 does not apply to refunds of taxes paid or cancellation of taxes levied for taxable year 2022 on property exempt from taxation under this Act. The board of county commissioners shall direct refund of taxes paid or cancellation of taxes levied on property exempt from taxation under this Act.

**SECTION 54. REPEAL.** Section 5 of Senate Bill No. 2020, as approved by the sixty-eighth legislative assembly, is repealed.

**SECTION 55. BANK OF NORTH DAKOTA LINE OF CREDIT - WATER INFRASTRUCTURE REVOLVING LOAN FUND - TRANSFER.** The Bank of North Dakota shall extend a line of credit not to exceed \$100,000,000 to the department of water resources to be transferred to the water infrastructure revolving loan fund as requested by the director of the department of water resources to provide local

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<sup>35</sup> Section 61-16.1-11 was also amended by section 1 of Senate Bill No. 2372, chapter 571.

cost-share loans for projects approved by the state water commission pursuant to section 6-09-49.2. The interest rate associated with the line of credit must be the prevailing interest rate charged to North Dakota government entities. The department of water resources shall request a deficiency appropriation from the sixty-ninth legislative assembly to repay the line of credit.

**SECTION 56. PUBLIC EMPLOYEES RETIREMENT SYSTEM - MAIN SYSTEM DEFINED BENEFIT PLAN INVESTMENTS.** During the 2023-25 biennium, the retirement board may not reduce the actuarial rate of return assumption for the public employees retirement system main system defined benefit plan below six and one-half percent.

**SECTION 57. PUBLIC EMPLOYEES RETIREMENT SYSTEM - RETIREMENT PLAN TRANSITION EDUCATION.** During the 2023-25 biennium, the public employees retirement system shall conduct an informational campaign to educate current and prospective state employees of the transition from the defined benefit retirement plan to the defined contribution retirement plan.

**SECTION 58. EXEMPTION - INFRASTRUCTURE REVOLVING LOAN FUND.** Notwithstanding any other provision of law, a park district may apply for a loan from the infrastructure revolving loan fund under section 6-09-49, during the biennium beginning July 1, 2023, and ending June 30, 2025, to refinance an outstanding loan for a project completed after March 31, 2022, and to pay the outstanding balance of any special assessments associated with the project.

**SECTION 59. EXEMPTION - EMPLOYEE BENEFITS PROGRAMS COMMITTEE.** Sections 36 through 50 and sections 56 and 57 of this Act are exempt from the requirements of section 54-35-02.4.

**SECTION 60. EXEMPTION - FISCAL MANAGEMENT.** The amount appropriated for the fiscal management division, as contained in section 1 of chapter 15 of the 2021 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 statewide systems, including accounting, management, and payroll, during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 61. EXEMPTION - UNEXPENDED APPROPRIATIONS.** The following appropriations are not subject to the provisions of section 54-44.1-11 and may be continued into the biennium beginning July 1, 2023, and ending June 30, 2025:

1. The sum of \$500,000 appropriated from the strategic investment and improvements fund in section 1 and identified in section 2 of chapter 40 of the 2019 Session Laws and continued into the 2021-23 biennium pursuant to section 42 of chapter 15 of the 2021 Session Laws for an assessment of state lands and facilities.
2. The sum of \$350,000 appropriated from the capitol building fund in section 1 and identified in section 2 of chapter 15 of the 2021 Session Laws for a facility consolidation study.

**SECTION 62. LEGACY FUND EARNINGS - REPORT TO LEGISLATIVE MANAGEMENT.** Each biennium, the state retirement and investment office shall provide a report including the amount of legacy fund earnings above the percent of market value that would have been transferred to the legacy earnings fund had Senate Bill No. 2330 not been passed by the sixty-eighth legislative assembly to the legislative management.

**SECTION 63. LEGISLATIVE MANAGEMENT STUDY - STATE FIRE AND TORNADO FUND AND STATE BONDING FUND ADMINISTRATION.** During the 2023-24 interim, the legislative management shall consider studying, in collaboration with the insurance commissioner and the director of the office of management and budget, the feasibility and desirability of changing administration of the state fire and tornado fund and state bonding fund from the insurance commissioner to the director of the office of management and budget. The study must include an analysis of the statutory changes necessary to accomplish the change in administration and other statutory changes necessary to facilitate the office of management and budget's administration of these funds. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 64. LEGISLATIVE MANAGEMENT STUDY - MANAGEMENT AND MAINTENANCE OF STATE FACILITIES.**

1. During the 2023-24 interim, the legislative management shall consider studying the policies and procedures of state agencies, excluding institutions under the control of the state board of higher education, for managing, maintaining, and leasing state facilities.
2. The study must include consideration of:
  - a. The most efficient and cost-effective organizational structure for managing, maintaining, and leasing state facilities, including a comparison of allocating funding and full-time equivalent positions to various agencies and centralizing funding and full-time equivalent positions under one agency.
  - b. The costs and benefits of leasing or owning state facilities.
  - c. The appropriate use of contracts for service and full-time equivalent positions for custodial services, mechanical services, snow removal, lawn care, and maintenance.
3. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 65. LEGISLATIVE MANAGEMENT STUDY - GUARDIANSHIP PROGRAMS.** During the 2023-24 interim, the legislative management shall study the state's guardianship programs. The study must include consideration of the existing structure for the programs under the office of management and budget, judicial branch, and department of health and human services; the feasibility of consolidating the programs under one agency; and an appropriate level of funding for the programs. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 66. CONTINGENT EFFECTIVE DATE.** Sections 36 through 40 and sections 44 through 50 of this Act become effective on January 1, 2024, if before that date the retirement board certifies to the legislative council that the public employees retirement system is prepared to close the main system defined benefit retirement plan on December 31, 2023, and to open the new defined contribution retirement plan on January 1, 2024.

**SECTION 67. EFFECTIVE DATE.** Section 41 of this Act becomes effective on June 1, 2023. Section 27 of this Act becomes effective on July 1, 2024.

**SECTION 68. EMERGENCY.** The following are declared to be an emergency measure:

1. The targeted market equity pool line item in section 1 of this Act and section 20 of this Act;
2. The deferred maintenance funding pool line item in section 1 of this Act and section 15 of this Act;
3. Sections 4, 5, 30, and 41 of this Act;
4. Section 4 of Senate Bill No. 2012, as approved by the sixty-eighth legislative assembly; and
5. Senate Bill No. 2024, as approved by the sixty-eighth legislative assembly.

Approved May 9, 2023

Filed May 10, 2023

## CHAPTER 48

### SENATE BILL NO. 2016

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the office of the adjutant general; to provide an exemption; to provide a statement of legislative intent; to provide for a legislative management study; to provide for a 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 office of the adjutant general for the purpose of defraying the expenses of the office of the adjutant general, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

##### Subdivision 1.

#### NATIONAL GUARD

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$7,150,489	\$411,321	\$7,561,810
Operating expenses	3,048,313	165,898	3,214,211
Capital assets	224,046	20,300,000	20,524,046
Grants	210,916	259,776	470,692
Civil air patrol	309,125	72,331	381,456
Tuition, recruiting, and retention	3,042,235	320,000	3,362,235
Air guard contract	8,490,161	196,901	8,687,062
Army guard contract	48,203,473	2,143,626	50,347,099
Veterans' cemetery	1,325,998	33,397	1,359,395
Reintegration program	<u>925,524</u>	<u>(45,471)</u>	<u>880,053</u>
Total all funds	\$72,930,280	\$23,857,779	\$96,788,059
Less estimated income	<u>56,326,564</u>	<u>21,842,012</u>	<u>78,168,576</u>
Total general fund	\$16,603,716	\$2,015,767	\$18,619,483

##### Subdivision 2.

#### DEPARTMENT OF EMERGENCY SERVICES

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$12,232,240	\$620,257	\$12,852,497
Operating expenses	6,502,334	313,233	6,815,567
Capital assets	660,000	150,000	810,000
Grants	14,550,000	13,554,000	28,104,000
Disaster costs	<u>51,485,736</u>	<u>168,633,862</u>	<u>220,119,598</u>
Total all funds	\$85,430,310	\$183,271,352	\$268,701,662

Less estimated income	<u>79,151,794</u>	<u>181,883,703</u>	<u>261,035,497</u>
Total general fund	\$6,278,516	\$1,387,649	\$7,666,165

Subdivision 3.

### SECTION 1 TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$22,882,232	\$3,403,416	\$26,285,648
Grand total special funds	<u>135,478,358</u>	<u>203,725,715</u>	<u>339,204,073</u>
Grand total all funds	\$158,360,590	\$207,129,131	\$365,489,721
Full-time equivalent positions	222.00	11.00	233.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Emergency response equipment and supplies	\$100,000	\$660,000
Dickinson readiness center project	15,500,000	8,900,000
Military museum	10,000,000	0
Fraine Barracks automation system	320,000	0
Fargo readiness center equipment	100,000	0
Bridge training site	6,000,000	0
Camp Grafton expansion	3,500,000	0
Disaster response	887,873	0
Payroll expenses	1,000,000	0
State active-duty software	450,000	0
Camp Grafton housing	2,000,000	0
Deferred maintenance	1,000,000	1,000,000
Retirement payouts	0	275,000
Statewide interoperable radio network equipment	0	2,700,000
Camp Grafton fitness facility	0	9,000,000
Minot airport hangar	0	60,000
State radio consoles	0	150,000
Cybersecurity grant	0	314,000
Safeguarding Tomorrow through Ongoing Risk Mitigation Act	0	1,000,000
Flood mitigation grants	0	225,000
Natural disaster response and recovery grants	0	2,000,000
Disaster grants	<u>0</u>	<u>142,652,500</u>
Total all funds	\$40,857,873	\$168,936,500
Total other funds	<u>38,877,873</u>	<u>167,312,500</u>
Total general fund	\$1,980,000	\$1,624,000

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The adjutant general shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. 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 that 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, 2023, and ending June 30, 2025.

**SECTION 4. ESTIMATED INCOME - FEDERAL STATE FISCAL RECOVERY FUND - ADJUTANT GENERAL.** The estimated income line item in subdivision 1 of section 1 of this Act includes \$20,600,000 from the federal state fiscal recovery fund, of which up to \$8,900,000 is for the completion of the Dickinson readiness center in accordance with section 5 of this Act, \$2,700,000 is for statewide interoperable radio network equipment, and \$9,000,000 is for the construction of the Camp Grafton fitness facility.

**SECTION 5. CONTINGENT APPROPRIATION - FEDERAL STATE FISCAL RECOVERY FUND - OTHER FEDERAL FUNDS - ADJUTANT GENERAL.**

1. Subject to the provisions of this section, there is appropriated from federal funds derived from the federal state fiscal recovery fund, not otherwise appropriated, the sum of \$5,300,000, or so much of the sum as may be necessary, to the adjutant general for the purpose of constructing Camp Grafton training billets, for the biennium beginning July 1, 2023, and ending June 30, 2025.
2. The funding appropriated under this section is contingent upon the adjutant general certifying to the office of management and budget that at least \$5,300,000 of federal funding sources other than from the federal state fiscal recovery fund is available and will be used for the Dickinson readiness center project. Upon receiving certification, the director of the office of management and budget shall adjust the appropriate amount of federal funding authority for the Dickinson readiness center project from the federal state fiscal recovery fund to the new federal funding source.

**SECTION 6. 2021-23 BIENNIUM APPROPRIATION - TRANSFER - VETERANS' CEMETERY TRUST FUND.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$26,656, which the office of management and budget shall transfer to the veterans' cemetery trust fund for the payment of adjusted compensation to veterans in accordance with provisions of section 12 of chapter 41 of the 2019 Session Laws, during the period beginning with the effective date of this Act, and ending June 30, 2023.

**SECTION 7. ESTIMATED INCOME - STATE DISASTER RELIEF FUND - ADJUTANT GENERAL.** The estimated income line item in subdivision 2 of section 1 of this Act includes \$14,918,245 from the state disaster relief fund, of which \$11,693,245 is for costs related to previous state disasters, \$2,000,000 is for natural disaster response and recovery grants, \$1,000,000 is for the ten percent state match for the federal safeguarding tomorrow through ongoing risk mitigation program, and \$225,000 is for flood mitigation grants.

**SECTION 8. NATURAL DISASTER RESPONSE AND RECOVERY GRANTS.** The disaster costs line item in subdivision 2 of section 1 of this Act includes \$2,000,000 from the state disaster relief fund for preparing for, responding to, and recovering from natural disasters.

**SECTION 9. CYBERSECURITY GRANT PROGRAM.** The adjutant general may spend up to \$314,000 from the general fund in the grants line item in subdivision 2 of

section 1 of this Act providing grants to political subdivisions for all or a portion of the required five percent local match for cybersecurity enforcement.

**SECTION 10. EXEMPTION - MAINTENANCE AND REPAIRS - TRANSFERS.**

Notwithstanding section 54-16-04, the director of the office of management and budget shall transfer up to \$500,000 of appropriation authority to the operating expenses and capital assets line items contained in section 1 of this Act, as requested by the adjutant general to provide for the maintenance and repair of state-owned armories in this state during the biennium beginning July 1, 2023, and ending June 30, 2025. The adjutant general shall notify the legislative council of any transfers made pursuant to this section.

**SECTION 11. EXEMPTION - WATCH CENTER POSITIONS - TRANSFERS.**

Notwithstanding section 54-16-04, the director of the office of management and budget shall transfer up to \$409,260 of appropriation authority to the salaries and wages line item from cost-savings in the operating expenses line item contained in section 1 of this Act, as requested by the adjutant general to provide funding for two watch center positions during the biennium beginning July 1, 2023, and ending June 30, 2025. The adjutant general shall notify the legislative council of any transfers made pursuant to this section.

**SECTION 12. EXEMPTION - UNEXPENDED APPROPRIATIONS.** The following appropriations are not subject to the provisions of section 54-44.1-11 and may be continued into the biennium beginning July 1, 2023, and ending June 30, 2025:

1. The sum of \$450,000 appropriated from the strategic investment and improvements fund for computer-aided dispatch equipment in section 12 of chapter 16 of the 2021 Session Laws;
2. The sum of \$3,042,235 appropriated from the general fund for tuition assistance, recruiting and retention incentives to eligible current and former members of the North Dakota national guard in subdivision 1 of section 1 of chapter 16 of the 2021 Session Laws;
3. The sum of \$80,000 appropriated from the general fund and \$240,000 of federal funds for the Fraine Barracks automation system in subdivision 1 of section 1 of chapter 16 of the 2021 Session Laws;
4. The sum of \$15,500,000 appropriated from federal funds for the construction of the Dickinson readiness center in subdivision 1 of section 1 of chapter 16 of the 2021 Session Laws;
5. The sum of \$6,000,000 appropriated from federal funds for the line of communication bridge training site in subdivision 1 of section 1 of chapter 16 of the 2021 Session Laws;
6. Any amounts remaining from the national guard training area and facility development trust fund and the strategic investment and improvements fund for the expansion of Camp Grafton in section 3 and section 14 of chapter 16 of the 2021 Session Laws;
7. Any amounts remaining for the purpose of defraying COVID-19 and other expenses in subdivision 7 of section 1 of chapter 27 and subdivision 7 of section 2 of chapter 28 of the 2021 Session Laws;

8. Any amounts remaining from the federal state fiscal recovery fund for replacing the state active duty software and maintenance in subsection 24 of section 1 of chapter 550 of the 2021 Special Session Session Laws; and
9. Any amounts remaining from the federal state fiscal recovery fund for enhancing housing at Camp Grafton in subsection 31 of section 1 of chapter 550 of the 2021 Special Session Session Laws.

**SECTION 13. CAMP GRAFTON - LEGISLATIVE INTENT.** It is the intent of the sixty-eighth legislative assembly that:

1. The adjutant general contract for the purchase or long-term lease of land for the Camp Grafton expansion, including the purchase of no more than one thousand six hundred acres and the long-term lease of the remainder, not to exceed six thousand acres in total.
2. The adjutant general not use eminent domain for the expansion of Camp Grafton.

**SECTION 14. GIFTS, DONATIONS, AND BEQUESTS - NORTH DAKOTA MILITARY MUSEUM.** The adjutant general may accept funds, including those from private and federal sources, to match state funds for the construction of a North Dakota military museum during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 15. LEGISLATIVE MANAGEMENT STUDY - COLD WAR TRAIL PROJECT.** During the 2023-24 interim, the legislative management shall consider studying the feasibility and desirability of a cold war trail project. The study must consider potential sites to include on the trail and options and costs of:

1. The construction, addition, maintenance, and equipment for new and existing North Dakota cold war historic sites;
2. Providing educational resources regarding North Dakota's role in the cold war; and
3. Promoting tourism for North Dakota cold war historic sites.

The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 16. EMERGENCY.** The sum of \$314,000 in the grants line item of subdivision 2 of section 1 of this Act, the sum of \$2,000,000 in the disaster costs line item in subdivision 2 of section 1 of this Act, the sum of \$60,000 in the civil air patrol line item of subdivision 1 of section 1 of this Act, and sections 6, 8, and 9 of this Act are declared to be an emergency measure.

Approved May 8, 2023

Filed May 9, 2023

## CHAPTER 49

### SENATE BILL NO. 2017

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the game and fish department; to provide a contingent appropriation; to provide for a transfer; and to provide an exemption.

#### 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 the game and fish department, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$33,741,592	\$2,746,155	\$36,487,747
Operating expenses	16,276,782	1,543,716	17,820,498
Capital assets	6,774,770	1,773,891	8,548,661
Grants - game and fish	8,923,343	1,166,633	10,089,976
Land habitat and deer depredation	17,995,597	9,212,172	27,207,769
Noxious weed control	725,000	0	725,000
Missouri River enforcement	296,999	16,342	313,341
Grants, gifts, and donations	670,133	6,853	676,986
Nongame wildlife conservation	100,000	0	100,000
Lonetree reservoir	1,818,409	334,235	2,152,644
Wildlife services	500,000	0	500,000
Shooting sports grant program	250,000	0	250,000
Aquatic nuisance species program	<u>1,509,009</u>	<u>1,229,835</u>	<u>2,738,844</u>
Total special funds	\$89,581,634	\$18,029,832	\$107,611,466
Full-time equivalent positions	164.00	6.00	170.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Additional PLOTS payments	\$1,485,000	\$0
Red River basin wildlife and water quality program	500,000	0
State radio equipment	801,500	0
Aquatic nuisance species laboratory and storage facility	0	850,000
In-car video system and body cameras	0	550,000
Fisheries pond liners	0	1,000,000
Devils Lake bunkhouse improvements	0	350,000
Fisheries dam repairs	0	380,000
Wash stations and other equipment	0	205,000

Uniforms and supplies for new FTE positions	0	89,090
Total special funds	\$2,786,500	\$3,424,090

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The game and fish department shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. GRANTS, GIFTS, AND DONATIONS LINE ITEM.** The grants, gifts, and donations line item in section 1 of this Act includes up to \$100,000 received by the game and fish department for surface damage, easements, or reclamation on department-owned or managed properties as a result of mineral exploration and extraction activities.

**SECTION 4. CONTINGENT APPROPRIATION AND FULL-TIME EQUIVALENT POSITIONS - RECOVERING AMERICA'S WILDLIFE ACT.** Subject to the provisions of this section, there is appropriated from federal funds, the sum of \$27,150,000, or so much of the sum as may be necessary, to the game and fish department for the purpose of administering programs approved under the federal Recovering America's Wildlife Act, for the biennium beginning July 1, 2023, and ending June 30, 2025. The department is authorized four full-time equivalent positions for this purpose. The funding and positions authorized in this section are available only upon enactment of the federal Recovering America's Wildlife Act and after corresponding federal funds have been made available to the state. The department shall regularly coordinate with and consider input from the federal environmental law impact review committee in the expenditure of funds for conservation or research under this section.

**SECTION 5. MIDTERM CONSERVATION AGREEMENTS.** The game and fish department may spend up to \$2,777,778 from other funds in the land habitat and deer depredation line item in section 1 of this Act for national fish and wildlife foundation midterm conservation agreements with private landowners. The department shall limit the term of these agreements to a maximum of thirty years. The department shall provide buyback provisions after the fifteenth, twentieth, and twenty-fifth years of the agreement if the property owner desires to withdraw all or a portion of acreage from the lease.

**SECTION 6. EXEMPTION - LINE ITEM TRANSFERS.** Notwithstanding section 54-16-04, the director of the office of management and budget shall transfer up to \$2,000,000 of appropriation authority between the operating expenses, capital assets, and grants - game and fish line items in section 1 of this Act as requested by the game and fish department during the biennium beginning July 1, 2023, and ending June 30, 2025. The game and fish department shall notify the legislative council of any transfers made pursuant to this section.

Approved April 27, 2023

Filed April 28, 2023

## CHAPTER 50

### SENATE BILL NO. 2018

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the state historical society; to amend and reenact sections 55-03-01 and 55-03-01.1 of the North Dakota Century Code, relating to permit fees; to provide an exemption; to provide a statement of legislative intent; and to provide for a legislative management 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 historical society for the purpose of defraying the expenses of the state historical society, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$15,791,624	\$722,870	\$16,514,494
Operating expenses	4,473,663	122,168	4,595,831
Capital assets	1,251,015	24,163,413	25,414,428
Grants	600,000	1,203,340	1,803,340
Cultural heritage grants	500,000	0	500,000
America's 250th celebration	0	250,000	250,000
Exhibits	0	<u>300,000</u>	<u>300,000</u>
Total all funds	\$22,616,302	\$26,761,791	\$49,378,093
Less estimated income	<u>3,229,952</u>	<u>24,109,231</u>	<u>27,339,183</u>
Total general fund	\$19,386,350	\$2,652,560	\$22,038,910
Full-time equivalent positions	78.75	4.75	83.50

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Historical site and extraordinary repairs	\$4,200,000	\$3,250,000
Essential infrastructure at historic sites	950,000	0
State archives digital repository upgrade	25,000	0
Inflationary costs	0	120,795
Digital interactive initiative	0	425,000
Geographic information system remote access and upgrade	0	250,000
Medora site planning	0	150,000
Army corps of engineers grant	0	400,000
Opera house restoration	0	250,000
Whitestone Hill monument	0	250,000

Digital humanities advancement grant	0	30,000
Scanner and microfilm plotter	0	236,044
Exhibit engagement	0	375,000
Paul Bruhn historical revitalization grant	0	750,000
Underrepresented community grant	0	125,000
America's 250th celebration	0	250,000
Military museum	0	<u>20,000,000</u>
Total all funds	\$5,175,000	\$26,861,839
Total special funds	<u>5,150,000</u>	<u>24,955,000</u>
Total general fund	\$25,000	\$1,906,839

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The state historical society shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**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, 2023, and ending June 30, 2025.

**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, 2023, and ending June 30, 2025.

**SECTION 5. BANK OF NORTH DAKOTA - LINE OF CREDIT - MILITARY MUSEUM - LEGISLATIVE INTENT.** The Bank of North Dakota shall extend a line of credit to the state historical society to provide funding to pay costs associated with the construction of a North Dakota military museum and related expansion projects for the state historical society. The line of credit may not exceed \$20,000,000, and the interest rate associated with the line of credit must be the prevailing rate charged to North Dakota government entities. It is the intent of the sixty-eighth legislative assembly that the state historical society request funding from the sixty-ninth legislative assembly from the legacy earnings fund to repay the line of credit.

**SECTION 6. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - STATE HISTORICAL SOCIETY.** The estimated income line item in section 1 of this Act includes \$3,550,000 from the strategic investment and improvements fund, of which \$3,250,000 is for critical repairs to historic site structures and \$300,000 is for creating new and repairing existing exhibits.

**SECTION 7. ESTIMATED INCOME - DEPARTMENT OF TRANSPORTATION GRANT.** The estimated income line item in section 1 of this Act includes \$100,000 of grant funding from the department of transportation for the purpose of defraying expenses of the Lewis and Clark interpretive center.

**SECTION 8. AMENDMENT.** Section 55-03-01 of the North Dakota Century Code is amended and reenacted as follows:

**55-03-01. Permit required to investigate, evaluate, or mitigate adverse effect on cultural resources, historic buildings, structures, or objects - Application - Fee.**

Any person engaged in identifying, evaluating, or mitigating adverse effects on cultural resources, historic buildings, structures, or objects on any lands in North Dakota, under ~~section 106 of the National Historic Preservation Act of 1966 [Pub. L. 89-665; 80 Stat. 915; 16 U.S.C. 470, as amended by Pub. L. 91-243, Pub. L. 93-54, Pub. L. 94-422, and Pub. L. 94-458], 36 CFR 800; or subdivision u of subsection 1 of section 38-14.1-14~~ any applicable state law, shall obtain an annual permit from the director of the state historical society. The permit application must be in the form prescribed by the director. Each application must be accompanied by a filing fee of ~~one hundred dollars~~ as determined by the director. The director may waive the fee requirement if the applicant is an instrumentality of the state. Following issuance of the annual permit, the permittee shall submit to the state historical society payment in the amount of ~~fifty dollars~~ determined by the director with every cultural resources identification, monitoring report, evaluation, and mitigation report submitted to the director in compliance with the federal and state statutory and regulatory requirements identified in this section. A permittee submitting a report on behalf of a nonprofit corporation formed under chapter 10-33 does not have to pay the fee for filing the report.

**SECTION 9. AMENDMENT.** Section 55-03-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**55-03-01.1. Permit required to investigate, excavate, or otherwise record cultural resources on land owned by an instrumentality of the state and to excavate cultural resources on private land.**

Any person engaged in the investigation, excavation, or other recording of cultural resources on land owned by an instrumentality of the state or in the excavation of cultural resources on private land for any purposes other than those identified in section 55-03-01 first shall obtain a permit from the director. A permit may be granted only for the investigation, excavation, or other recording of cultural resources at the locations described in the application for permit. Each application must be accompanied by a fee of ~~one hundred dollars~~ as determined by the director, unless the director waives the fee.

**SECTION 10. EXEMPTION - FEDERAL STATE FISCAL RECOVERY FUND.** Section 54-44.1-11 does not apply to the appropriation in section 5 of chapter 18 of the 2021 Session Laws as amended by section 2 of chapter 548 of the 2021 Special Session Laws, and any unexpended funds from this appropriation may be continued and used for the purpose of deferred maintenance and extraordinary repair projects during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 11. LEGISLATIVE MANAGEMENT STUDY - RECORDS RETENTION.** During the 2023-24 interim, the legislative management shall consider studying the records management programs of state agencies and institutions related to records deemed historic in value. The study must include a review of state agencies' and institutions' compliance with the records management programs. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

Approved May 5, 2023

Filed May 9, 2023

## CHAPTER 51

### SENATE BILL NO. 2019

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the parks and recreation department; to provide for a transfer; and to provide for an exemption.

#### 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 for providing a grant to the International Peace Garden, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

Subdivision 1.

#### PARKS AND RECREATION DEPARTMENT

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Administration	\$2,765,070	\$189,761	\$2,954,831
Park operations and maintenance	21,155,523	90,860,669	112,016,192
Recreation	<u>11,126,162</u>	<u>9,558,081</u>	<u>20,684,243</u>
Total all funds	\$35,046,755	\$100,608,511	\$135,655,266
Less estimated income	<u>22,599,593</u>	<u>99,917,122</u>	<u>122,516,715</u>
Total general fund	\$12,447,162	\$691,389	\$13,138,551
Full-time equivalent positions	57.75	7.25	65.00

Subdivision 2.

#### INTERNATIONAL PEACE GARDEN

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
International Peace Garden	<u>\$876,329</u>	<u>\$1,050,000</u>	<u>\$1,926,329</u>
Total all funds	\$876,329	\$1,050,000	\$1,926,329
Less estimated income	<u>0</u>	<u>800,000</u>	<u>800,000</u>
Total general fund	\$876,329	\$250,000	\$1,126,329

Subdivision 3.

#### SECTION 1 TOTAL

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Grand total general fund	\$13,323,491	\$941,389	\$14,264,880
Grand total special funds	22,599,593	100,717,122	123,316,715
Grand total all funds	\$35,923,084	\$101,658,511	\$137,581,595

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Extraordinary repairs and capital projects	\$7,900,000	\$0
Local park district grants	5,000,000	0
International Peace Garden capital projects	3,000,000	0
Trail lease renewals	200,000	0
Fort Abraham Lincoln viewshed lease	50,000	0
Parks matching grant program	1,632,800	3,000,000
Deferred maintenance and capital projects	10,000,000	10,000,000
Cabin construction	0	2,400,000
Lake Metigoshe reimagined project	0	250,000
City, county, and tribal park system grants	0	6,000,000
Pembina Gorge campground construction	0	6,000,000
International Peace Garden pavilion construction	0	800,000
Theodore Roosevelt presidential library project	<u>0</u>	<u>70,000,000</u>
Total all funds	\$27,782,800	\$98,450,000
Total other funds	<u>27,532,800</u>	<u>98,450,000</u>
Total general fund	\$250,000	\$0

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The parks and recreation department shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. LINE OF CREDIT - THEODORE ROOSEVELT PRESIDENTIAL LIBRARY PROJECT.**

1. The Bank of North Dakota shall extend a line of credit not to exceed \$70,000,000 to the parks and recreation department. The interest rate on the line of credit may not exceed the prevailing interest rate charged to North Dakota governmental entities.
2. The parks and recreation department may use the funds borrowed through the line of credit to support activities related to the Theodore Roosevelt presidential library project. The parks and recreation department shall require any entity receiving funds under this section to repay the funds to the department, including accrued interest.
3. The parks and recreation department may accept funds from participating entities and shall use the funds to repay the line of credit. If the amounts available are not anticipated to be sufficient to repay the line of credit by June 30, 2027, the department shall request a deficiency appropriation from the legislative assembly to repay the line of credit.
4. The department shall develop guidelines and rules for the use and repayment of this funding.

**SECTION 4. GAME AND FISH OPERATING FUND - TRANSFER - BOAT RAMP OPERATION AND MAINTENANCE.** The sum of \$122,000, or so much of the sum as may be necessary, included in the park operations and maintenance 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, which 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, 2023, and ending June 30, 2025.

**SECTION 5. ADDITIONAL INCOME - APPROPRIATION - REPORTING.** In addition to the amounts appropriated in section 1 of this Act, any additional federal or other funds that become available are appropriated to the parks and recreation department for the biennium beginning July 1, 2023, and ending June 30, 2025. The department shall report any additional income under this section to the office of management and budget and the legislative council.

**SECTION 6. ESTIMATED INCOME - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - PARKS AND RECREATION.** The estimated income line item in section 1 of this Act includes \$26,950,000 from the strategic investment and improvements fund, of which \$10,000,000 is for deferred maintenance and capital projects, \$6,000,000 is for a Pembina Gorge campground construction project, \$2,400,000 is for cabin construction at a park selected by the director of the parks and recreation department, \$250,000 is for the Lake Metigoshe reimaged project, \$1,500,000 is for state park matching grants, \$800,000 is for the construction of a pavilion at the International Peace Garden, and \$6,000,000 is for city, county, and tribal park system grants.

**SECTION 7. CITY, COUNTY, AND TRIBAL GRANT PROGRAM - MATCHING REQUIREMENTS - GRANT LIMITATION.** With the funding provided for the city, county, and tribal grant program, the parks and recreation department shall make available \$1,000,000 for grant awards to communities with a population of fifteen thousand or less and may not award more than \$150,000 to an entity and \$5,000,000 for grant awards to communities with a population of more than fifteen thousand and may not award more than \$1,000,000 to an entity. Expenditure of these funds is subject to one-to-one matching funds from nonstate sources.

**SECTION 8. INTERNATIONAL PEACE GARDEN PAVILION CONSTRUCTION GRANT - MATCHING REQUIREMENTS.** The International Peace Garden line item in subdivision 2 of section 1 of this Act includes \$800,000 for construction of a pavilion at the International Peace Garden. Expenditure of these funds is subject to one-to-one matching funds from the province of Manitoba or other nonstate sources.

**SECTION 9. EXEMPTION - UNEXPENDED APPROPRIATIONS.** The following appropriations are not subject to the provisions of section 54-44.1-11 and may be continued into the biennium beginning July 1, 2023, and ending June 30, 2025:

1. Any funds remaining in the International Peace Garden line item for repair of the peace tower at the International Peace Garden in subdivision 2 of section 30 of chapter 15 of the 2013 Session Laws are available for capital projects and extraordinary repairs and equipment. Funding available for use by the International Peace Garden in this section is subject to the International Peace Garden raising dollar-for-dollar matching funds from nonstate sources;
2. Any funds remaining for trail lease renewals and construction or purchasing trail easements in subdivision 1 of section 1 of chapter 19 of the 2021 Session Laws are available for trail lease renewals and construction and repairs and purchasing trail easements;

3. Any funds remaining for extraordinary repairs in subdivision 1 of section 1 of chapter 44 of the 2019 Session Laws;
4. Any funds remaining for parks capital projects and International Peace Garden capital projects in subdivision 1 of section 1 of chapter 44 of the 2019 Session Laws are available for any capital projects and equipment;
5. Any funds remaining for the Fort Abraham Lincoln viewshed lease in subdivision 1 of section 1 of chapter 19 of the 2021 Session Laws are available for plantings to improve the viewshed;
6. Any funds remaining for extraordinary repairs and capital projects in subdivision 1 of section 1 of chapter 19 of the 2021 Session Laws;
7. Any funds remaining for deferred maintenance and capital projects from the federal state fiscal recovery fund in subsection 9 of section 1 of chapter 550 of the 2021 Special Session Session Laws;
8. Any funds remaining for grants to local park districts to renovate and upgrade existing facilities from the federal state fiscal recovery fund in subsection 5 of section 1 of chapter 550 of the 2021 Special Session Session Laws; and
9. Any funds remaining from the federal state fiscal recovery fund in section 7 of chapter 19 of the 2021 Session Laws as amended by section 4 of chapter 548 of the 2021 Special Session Session Laws for capital projects improvements at state parks, subject to the department obtaining matching funds from nonstate sources for each project on a dollar-for-dollar basis.
10. Any funds remaining from the federal state fiscal recovery fund in section 6 of chapter 19 of the 2021 Session Laws as amended by section 3 of chapter 548 of the 2021 Special Session Session Laws for deferred maintenance and capital projects.

Approved May 4, 2023

Filed May 5, 2023

## CHAPTER 52

### SENATE BILL NO. 2020

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the department of water resources; to provide an appropriation to the parks and recreation department; to amend and reenact section 61-02-79 of the North Dakota Century Code and section 4 of chapter 20 of the 2021 Session Laws, relating to a Bank of North Dakota line of credit and state water commission discretionary funding; to provide for a transfer; to provide for a report; 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 from special funds derived from federal funds and other income, to the department of water resources for the purpose of defraying the expenses of the department of water resources, for the period beginning with the effective date of this Act, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$20,537,867	\$1,656,382	\$22,194,249
Operating expenses	43,366,550	16,112,518	59,479,068
Capital assets	98,467,437	177,316,513	275,783,950
Water supply - grants	125,000,000	191,200,000	316,200,000
Rural water supply - grants	59,600,000	(7,600,000)	52,000,000
Flood control projects	48,000,000	67,700,000	115,700,000
Discretionary funding	0	9,000,000	9,000,000
General water - grants	<u>14,227,275</u>	<u>(2,227,275)</u>	<u>12,000,000</u>
Total special funds	\$409,199,129	\$453,158,138	\$862,357,267
Full-time equivalent positions	90.00	3.00	93.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Line of credit - Bank of North Dakota	\$50,000,000	\$100,000,000
Basinwide plan implementation	1,100,000	0
Discretionary funding	0	9,000,000
Equipment for new employees	0	19,320
Information technology unification	0	1,532,980
Increased motor pool rates	0	118,180
Drilling supplies inflation	0	180,000
Navigability study	0	180,000
Airborne electromagnetic survey data collection	0	750,000
Ground water modeling and hydrologic analysis software	0	72,665
Potential agency relocation	0	200,000

Radar system	0	1,800,000
Drilling rig replacement	0	1,800,000
Northwest area water supply	0	47,847,238
Discretionary water project funding	6,000,000	0
Mouse River flood control project	74,500,000	0
Water infrastructure projects	<u>75,000,000</u>	<u>0</u>
Total special funds	\$206,600,000	\$163,500,383

The 2023-25 one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The department of water resources shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the period beginning with the effective date of this Act, and ending June 30, 2025.

**SECTION 3. ADDITIONAL 2021-23 BIENNIUM INCOME - APPROPRIATION.**

Any revenue deposited in the resources trust fund during the period beginning with the effective date of this Act, and ending June 30, 2023, in excess of the March 2023 legislative revenue forecast is appropriated to the department of water resources for the purpose of providing water supply grants and rural water supply grants, for the period beginning with the effective date of this Act, and ending June 30, 2025. Any additional amounts must be allocated equally between water supply grants and rural water supply grants.

**SECTION 4. APPROPRIATION - WATER PROJECTS STABILIZATION FUND - LOAN REPAYMENT - ONE-TIME FUNDING ITEM.**

There is appropriated out of any moneys in the water projects stabilization fund in the state treasury, not otherwise appropriated, the sum of \$30,000,000, or so much of the sum as may be necessary, to the department of water resources for the purpose of repayment of loans issued by the Bank of North Dakota to the western area water supply authority for the period beginning with the effective date of this Act, and ending June 30, 2025. This funding is considered a one-time funding item.

**SECTION 5. TRANSFER - BANK OF NORTH DAKOTA PROFITS - WATER INFRASTRUCTURE REVOLVING LOAN FUND.**

The Bank of North Dakota shall transfer \$100,000,000, or so much of the sum as may be necessary, from its current earnings and accumulated profits to the water infrastructure revolving loan fund during the biennium beginning July 1, 2023, and ending June 30, 2025. The moneys must be transferred as requested by the director of the department of water resources, after consultation with the Bank of North Dakota, to provide local cost-share loans for projects approved by the state water commission pursuant to section 6-09-49.2.

**SECTION 6. WATER PROJECTS STABILIZATION FUND - TRANSFERS.**

Notwithstanding subsections 1 and 2 of section 57-51.1-07, any oil extraction tax revenues deposited in the resources trust fund that exceed the amount included in the March 2023 legislative revenue forecast during the period beginning July 1, 2023, and ending June 30, 2025, must be transferred at least quarterly by the office of management and budget from the resources trust fund to the water projects stabilization fund for the period beginning with the effective date of this Act, and ending June 30, 2025.

**SECTION 7. APPROPRIATION - PARKS AND RECREATION DEPARTMENT - SOVEREIGN LANDS RECREATION USE GRANTS - ONE-TIME FUNDING.**

There is appropriated from special funds derived from a grant from the state water commission, not otherwise appropriated, the sum of \$2,000,000, or so much of the sum as may be necessary, to the parks and recreation department for the purpose of

providing grants for developing recreation opportunities on sovereign lands in the state, for the period beginning with the effective date of this Act, and ending June 30, 2025. An eligible grant recipient must identify \$1 of matching funds for each \$1 awarded pursuant to this section. This funding is considered to be a one-time funding item.

**SECTION 8. SOVEREIGN LANDS RECREATION USE GRANT.** The water supply - grants line item in section 1 of this Act includes \$2,000,000 from the resources trust fund which the state water commission shall provide as a grant to the parks and recreation department for developing recreation opportunities on sovereign lands in the state, for the period beginning with the effective date of this Act, and ending June 30, 2025.

**SECTION 9. DEPARTMENT OF WATER RESOURCES DISCRETIONARY FUNDING.** The discretionary funding appropriated to the department of water resources in section 1 of this Act may be used as necessary, except for salaries and wages, for the period beginning with the effective date of this Act, and ending June 30, 2025.

**SECTION 10. ESTIMATED INCOME - WATER PROJECTS STABILIZATION FUND.** The total special funds line item in section 1 of this Act includes \$123,380,315 from the water projects stabilization fund for water supply grants for the period beginning with the effective date of this Act, and ending June 30, 2025.

**SECTION 11. AMENDMENT.** Section 61-02-79 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-79. Bank of North Dakota - Line of credit.**

The Bank of North Dakota shall extend a line of credit not to exceed fiftyone hundred million dollars at a rate of one and one-half percent over the three month London interbank offered rate, but may not exceed three percent to the state water commission the prevailing interest rate charged to North Dakota government entities. The state water commission department of water resources shall repay the line of credit from funds available in the resources trust fund, water development trust fund, or other funds, as appropriated by the legislative assembly. The state water commission department of water resources may access the line of credit, as necessary, to provide funding as authorized by the legislative assembly up to fifty million dollars for the northwest area water supply project and up to fifty million dollars for the southwest pipeline project during the biennium beginning July 1, 2024 2023, and ending June 30, 2023 2025.

**SECTION 12. AMENDMENT.** Section 4 of chapter 20 of the 2021 Session Laws is amended and reenacted as follows:

**SECTION 4. APPROPRIATION - RESOURCES TRUST FUND - STATE WATER COMMISSION DISCRETIONARY FUNDING.** There is appropriated out of any moneys in the resources trust fund in the state treasury, not otherwise appropriated, the sum of \$6,000,000, or so much of the sum as may be necessary, to the state water commission for the purpose of providing discretionary funds for water project grants department of water resources to be used as necessary except for salaries and wages, for the biennium beginning July 1, 2021, and ending June 30, 2023. This funding is considered to be a one-time funding item.

**SECTION 13. STATE WATER COMMISSION - RED RIVER WATER SUPPLY PROJECT FUNDING - LEGISLATIVE INTENT.** Excluding the funding provided for

Red River water supply projects prior to the 2023-25 biennium, the state water commission may not approve state funding for the Red River water supply project in excess of a total of \$953,000,000 without legislative approval. It is the intent of the sixty-eighth legislative assembly that of the \$953,000,000, \$180,000,000 is provided from the resources trust fund for the period beginning with the effective date of this Act, and ending June 30, 2025.

**SECTION 14. STATE WATER COMMISSION - MOUSE RIVER FLOOD CONTROL PROJECT FUNDING - LEGISLATIVE INTENT.** Excluding the funding provided for Mouse River flood control projects prior to the 2023-25 biennium, the state water commission may not approve state funding for the Mouse River flood control project in excess of a total of \$380,500,000 without legislative approval. It is the intent of the sixty-eighth legislative assembly that of the \$380,500,000, \$76,100,000 is provided from the resources trust fund for the period beginning with the effective date of this Act, and ending June 30, 2025.

**SECTION 15. SOUTHWEST PIPELINE PROJECT FUNDING - LEGISLATIVE INTENT.** It is the intent of the sixty-eighth legislative assembly that the sixty-ninth legislative assembly appropriate \$40,000,000 from the resources trust fund for the southwest pipeline project water treatment plant for the biennium beginning July 1, 2025, and ending June 30, 2027.

**SECTION 16. LEGISLATIVE INTENT - STATE WATER COMMISSION - CITY OF BISMARCK WATER TREATMENT PLANT.** Excluding the funding provided for the city of Bismarck water treatment plant prior to the 2023-25 biennium, it is the intent of the sixty-eighth legislative assembly that up to \$50,000,000 of funding appropriated in the water supply - grants line item in section 1 of this Act be made available during the 2023-25 biennium for the city of Bismarck water treatment plant.

**SECTION 17. LEGISLATIVE INTENT - CITY OF MEDORA WATER SUPPLY PROJECT.** It is the intent of the sixty-eighth legislative assembly that the city of Medora request funding from the state water commission for water storage, water main replacement, and water supply expansion projects after all agreements for the construction of the Theodore Roosevelt presidential library have been finalized between the library, the library foundation, and the city of Medora.

**SECTION 18. MISSOURI RIVER SYSTEM - LEGISLATIVE INTENT.** It is the intent of the sixty-eighth legislative assembly that the department of water resources support efforts that protect and develop beneficial use of Missouri River system water and other available water supply sources.

**SECTION 19. DEPARTMENT OF WATER RESOURCES - GARRISON DIVERSION CONSERVANCY DISTRICT - LEGISLATIVE INTENT - REPORT.** It is the intent of the sixty-eighth legislative assembly that the department of water resources, in coordination with the Garrison Diversion Conservancy District, research and identify options for the use of the Missouri River intake constructed near Washburn. The department of water resources shall report its findings and recommendations to the legislative management by October 1, 2024.

**SECTION 20. EXEMPTION - LINE ITEM TRANSFERS.** Notwithstanding section 54-16-04, the office of management and budget shall transfer up to \$9,900,000 between the operating expenses and capital assets line items in section 1 of this Act, during the period beginning with the effective date of this Act, and ending June 30, 2025, as requested by the director of the department of water resources. The director of the department of water resources shall notify the legislative council of any transfers made pursuant to this section.

**SECTION 21. EXEMPTION - GRANTS - APPLICATION - WATER-RELATED PROJECTS - CARRYOVER AUTHORITY.** Section 54-44.1-11 does not apply to \$367,000,000 for grants or water-related projects included in the capital assets, water supply - grants, rural water supply - grants, flood control projects, and general water - grants line items in section 1 of chapter 20 of the 2021 Session Laws, sections 5 and 6 of chapter 20 of the 2021 Session Laws, section 9 of chapter 80 of the 2021 Session Laws, and subdivision 3 of section 1 of chapter 550 of the 2021 Special Session Session Laws. Any unexpended obligated and unobligated funds from these appropriations may be continued into the 2023-25 biennium. Any funds continued may be expended only for the purpose for which it was originally appropriated. The department of water resources may seek emergency commission and budget section approval under section 54-16-04.2 to increase carryover spending authority of funds appropriated in the 2021-23 biennium into the 2023-25 biennium.

**SECTION 22. EMERGENCY.** This Act and Senate Bill No. 2196, as approved by the sixty-eighth legislative assembly, are declared to be an emergency measure.

Approved May 8, 2023

Filed May 9, 2023

**CHAPTER 53**

**SENATE BILL NO. 2021**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of workforce safety and insurance; and to provide an exemption.

**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, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Workforce safety and insurance operations	\$62,122,928	\$9,900,794	\$72,023,722
Total special funds	\$62,122,928	\$9,900,794	\$72,023,722
Full-time equivalent positions	260.14	0.00	260.14

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Claims and policy system replacement project	\$7,500,000	\$4,950,000
MyWSI extranet enhancement project	3,050,000	1,830,000
Building upgrades	514,000	0
Total special funds	\$11,064,000	\$6,780,000

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. Workforce safety and insurance shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. EXEMPTION - DEFERRED MAINTENANCE.** The amount of \$291,000 transferred from the office of management and budget to workforce safety and insurance from federal funds derived from the state fiscal recovery fund pursuant to subsection 10 of section 1 of chapter 550 of the 2021 Session Laws is not subject to section 54-44.1-11 and is available for deferred maintenance of the workforce safety and insurance building during the biennium beginning July 1, 2023, and ending June 30, 2025.

Approved April 20, 2023

Filed April 21, 2023

## CHAPTER 54

### SENATE BILL NO. 2022

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the retirement and investment office; to create and enact a new subsection to section 54-44.3-20 and a new section to chapter 54-52.5 of the North Dakota Century Code, relating to exemptions from the state employee classification system and an incentive compensation program; to amend and reenact section 54-52.5-03 of the North Dakota Century Code, relating to operating costs of the retirement and investment office; to provide an exemption; to provide a report; 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 from special funds derived from income, to the retirement and investment office for the purpose of defraying the expenses of the retirement and investment office, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$6,785,839	\$2,124,208	\$8,910,047
Operating expenses	1,323,528	1,546,409	2,869,937
Contingencies	<u>100,000</u>	<u>100,000</u>	<u>200,000</u>
Total special funds	\$8,209,367	\$3,770,617	\$11,979,984
Full-time equivalent positions	25.00	9.00	34.00

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO THE SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the 2023-25 biennium one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Pension administration software implementation	\$0	\$574,900
Temporary salaries	<u>0</u>	<u>50,000</u>
Total special funds	\$0	\$624,900

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The retirement and investment office shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

<sup>36</sup> **SECTION 3.** A new subsection to section 54-44.3-20 of the North Dakota Century Code is created and enacted as follows:

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<sup>36</sup> Section 54-44.3-20 was also amended by section 21 of Senate Bill No. 2052, chapter 271.

Investment and fiscal operations positions of the state retirement and investment office necessary for the management of the investment of funds under the control of the state investment board.

**SECTION 4. AMENDMENT.** Section 54-52.5-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.5-03. State retirement and investment fund - Cost of operation of agency.**

A special fund known as the "state retirement and investment fund" is established for the purpose of defraying administrative expenses of the state retirement and investment office. The actual amount of administrative expenses incurred by the state retirement and investment office must be paid from the respective funds listed under section 21-10-06 and are hereby appropriated to the state retirement and investment fund in proportion to the services rendered for each fund as estimated by the state investment board. The amount necessary to pay all administrative expenses of the state retirement and investment office must be paid from the state retirement and investment fund in accordance with the agency's appropriation authority and earnings lawfully available for such purposes. Any interest income earned on the state retirement and investment fund must be credited to the fund.

**SECTION 5.** A new section to chapter 54-52.5 of the North Dakota Century Code is created and enacted as follows:

**Incentive compensation program - Report to legislative management.**

The state retirement and investment office may develop an incentive compensation program for full-time equivalent investment and fiscal operations positions necessary for the management of the investment of funds under the control of the state investment board. The program must promote profitability, productivity, and responsible fund management. The provisions of the program must be approved annually by the state investment board. The provisions must ensure that the payouts do not occur unless the risk-based performance of the investments that are internally managed exceed the risk-based performance of policy benchmarks. Any amounts paid under this program must be considered compensation and not personal profit on behalf of the employee. Each interim, the state retirement and investment office shall provide at least one report to the legislative management regarding the status of the program, including the provisions of the program; the total amount of incentives paid out to employees each year; and the minimum, maximum, and average payout per eligible full-time equivalent position.

**SECTION 6. EXEMPTION - PENSION ADMINISTRATION SYSTEM PROJECT.**

The sum of \$9,000,000 appropriated in section 1 of chapter 47 of the 2019 Session Laws and continued into the 2021-23 biennium pursuant to section 3 of chapter 22 of the 2021 Session Laws for the pension administration system is not subject to the provisions of section 54-44.1-11 and any unexpended funds are available for completing the project during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 7. REPORT TO BUDGET SECTION.** Prior to the implementation of the incentive compensation program under section 5 of this Act and after approval of the program by the state investment board, the state retirement and investment office shall provide a report to the budget section regarding the provisions of the program, during the period beginning with the effective date of this Act and ending June 30, 2025.

**SECTION 8. EMERGENCY.** Section 7 of this Act is declared to be an emergency measure.

Approved April 21, 2023

Filed April 24, 2023

**CHAPTER 55**

**SENATE BILL NO. 2023**

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the public employees retirement system; and to provide a contingent appropriation.

**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 from income to the public employees retirement system for the purpose of defraying the expenses of the public employees retirement system, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows.

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$7,209,060	\$529,419	\$7,738,479
Operating expenses	2,396,236	146,476	2,542,712
Contingencies	250,000	0	250,000
Defined benefit plan closure	0	372,027	372,027
Total special funds	\$9,855,296	\$1,047,922	\$10,903,218
Full-time equivalent positions	35.50	5.00	40.50

**SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-seventh legislative assembly for the 2021-23 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Upgrade benefit enrollment system	\$104,500	\$0
Upgrade PERSLink business system	257,600	125,000
Modify PERSLink business system	0	125,000
Temporary salaries	0	200,000
Staff operating expenses	0	5,000
Total special funds	\$362,100	\$455,000

The 2023-25 biennium one-time funding amounts are not part of the entity's base budget for the 2025-27 biennium. The public employees retirement system shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. DEFINED BENEFIT PLAN CLOSURE LINE ITEM - CONTINGENT FUNDING AND FULL-TIME EQUIVALENT POSITIONS.** The defined benefit plan closure line item in section 1 of this Act includes the sum of \$372,027, of which \$47,027 is for a portion of salaries and wages and related operating expenses for two full-time equivalent positions, \$200,000 is for temporary salaries, and \$125,000 is for modification of the PERSLink business system. The public employees retirement system may spend funding from this line item only if the sixty-eighth legislative

assembly closes the main system defined benefit retirement plan to new hires. Of the funding in this line item, \$327,000 is identified as a one-time funding item in section 2 of this Act. In addition, the public employees retirement system may request the office of management and budget to transfer up to \$479,660 of additional funding from the new and vacant FTE funding pool to this line item for salaries and wages of the full-time equivalent positions identified in this section.

Approved April 28, 2023

Filed April 29, 2023

# CHAPTER 56

## SENATE BILL NO. 2024

(Appropriations Committee)

AN ACT to provide an appropriation for defraying the expenses of the ethics commission; to provide for a legislative management study; and to provide for a legislative management report.

### 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 ethics commission for the purpose of defraying the expenses of the ethics commission, for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Ethics commission	\$623,984	\$514,258	\$1,138,242
Total general fund	\$623,984	\$514,258	\$1,138,242
Full-time equivalent positions	1.00	2.00	3.00

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

<u>One-Time Funding Description</u>	<u>2021-23</u>	<u>2023-25</u>
Attorney fees	\$0	\$72,000
Office relocation	0	25,000
New FTE position one-time costs	<u>0</u>	<u>1,825</u>
Total general fund	\$0	\$98,825

The 2023-25 biennium one-time funding amounts are not a part of the entity's base budget for the 2025-27 biennium. The ethics commission shall report to the appropriations committees of the sixty-ninth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. LEGISLATIVE MANAGEMENT STUDY - FEE STRUCTURE.** During the 2023-24 interim, the legislative management shall consider studying the feasibility and desirability of establishing a rate structure to offset the operating expenses of the ethics commission. The study must include a comparison of the funding method for ethics commissions used by other states within the region. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 4. REPORT - ETHICS COMMISSION ACTIVITIES.** During the 2023-24 interim, the ethics commission shall provide reports to the legislative management regarding the activities and operations of the commission. The reports must include information regarding the number of complaints received by the commission, education and outreach efforts, and the status of the commission's budget.

Approved April 28, 2023

Filed April 29, 2023

## CHAPTER 57

### SENATE BILL NO. 2025

(Appropriations Committee)

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.** 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 departments and institutions of the state of North Dakota for the purpose of defraying their expenses for the period beginning with the effective date of this Act, and ending June 30, 2023, as follows:

Subdivision 1.

OFFICE OF MANAGEMENT AND BUDGET

Judgment expenses	\$277,771
Total general fund	<u>\$277,771</u>

Subdivision 2.

ATTORNEY GENERAL

Prosecution witness fees	\$75,000
Statewide litigation funding pool	<u>1,000,000</u>
Total general fund	<u>\$1,075,000</u>

Subdivision 3.

DAKOTA COLLEGE AT BOTTINEAU

Education program reimbursement	<u>\$99,768</u>
Total general fund	<u>\$99,768</u>

Subdivision 4.

DEPARTMENT OF OF HEALTH AND HUMAN SERVICES

Medicaid expenses	<u>\$310,000,000</u>
Total all funds	\$310,000,000
Less estimated income	<u>285,000,000</u>
Total general fund	<u>\$25,000,000</u>

Subdivision 5.

ADJUTANT GENERAL

Loan repayment - disaster costs	\$4,695,890
Loan interest repayment - law enforcement costs	<u>1,026,833</u>
Total state disaster relief fund	\$5,722,723

Subdivision 6.

#### AGRICULTURE COMMISSIONER

Loan repayment - emergency feed transportation program	<u>\$1,700,000</u>
Total general fund	\$1,700,000

Subdivision 7.

#### TOTAL - SECTION 1

Grand total general fund	\$28,152,539
Grand total special funds	<u>290,722,723</u>
Grand total all funds	\$318,875,262

**SECTION 2. LEGISLATIVE INTENT - COST REIMBURSEMENTS - LOAN REPAYMENTS.** It is the intent of the sixty-eighth legislative assembly that the attorney general seek reimbursement from the federal government for the costs of responding to unlawful activity associated with the construction of the Dakota access pipeline. It is further the intent of the sixty-eighth legislative assembly that these reimbursements be used to repay the Bank of North Dakota loans authorized by the emergency commission and the legislative assembly which were obtained to provide the funding necessary to respond to the unlawful activity associated with the construction of the Dakota access pipeline. It is further the intent of the sixty-eighth legislative assembly that the provisions of section 54-16-13 apply to the loans, except that emergency commission approval does not apply.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 12, 2023

Filed April 13, 2023

## CHAPTER 58

### SENATE BILL NO. 2026

(Legislative Management)  
(Acute Psychiatric Treatment Committee)

AN ACT to provide an appropriation to the department of health and human services relating to the demolition of state hospital buildings; and to declare an emergency.

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

**SECTION 1. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES - ONE-TIME FUNDING.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$4,000,000, or so much of the sum as may be necessary, to the department of health and human services for the purpose of demolishing unused buildings on the state hospital campus, including the administrative building, employee building, associated tunnels, water tower, pig barn, and water treatment plant buildings, for the period beginning with the effective date of this Act, and ending June 30, 2025. Funding provided in this section is considered a one-time funding item.

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

Approved April 24, 2023

Filed April 24, 2023

## CHAPTER 59

### SENATE BILL NO. 2032

(Legislative Management)  
(Higher Education Committee)

AN ACT to provide an appropriation to the department of public instruction for the paraprofessional-to-teacher program.

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

**SECTION 1. APPROPRIATION - DEPARTMENT OF PUBLIC INSTRUCTION - PARAPROFESSIONAL-TO-TEACHER PROGRAM.** 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 department of public instruction for the purpose of providing grants to accredited institutions of higher education to assist paraprofessionals to become qualified teachers, for the biennium beginning July 1, 2023, and ending June 30, 2025. The department of public instruction may award up to \$20,000 to each qualifying institution for program startup and other administrative costs and the remainder of the appropriation may be used only for tuition and scholarships for students enrolled in the program. The department of public instruction may establish policies and procedures to administer this program.

Approved April 13, 2023

Filed April 14, 2023

## CHAPTER 60

### SENATE BILL NO. 2155

(Senators Lee, Hogan, Hogue)  
(Representatives Dobervich, M. Ruby, Strinden)

AN ACT to provide an appropriation to the department of health and human services for federally qualified health center grants; and to provide for a legislative management study on expanding the number of federally qualified health centers.

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

**SECTION 1. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES - FEDERALLY QUALIFIED HEALTH CENTER GRANTS.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$2,000,000, or so much of the sum as may be necessary, to the department of health and human services for the purpose of providing grants to federally qualified health centers, for the biennium beginning July 1, 2023, and ending June 30, 2025.

1. For purposes of this section, "federally qualified health center" means an entity receiving a grant under United States Code, title 42, section 254b.
2. The department of health and human services shall award grants from the funds appropriated in this section to federally qualified health centers in North Dakota to continue, expand, and improve federally qualified health center services to low-income populations. The grant amount for each center must be proportional to the amount of discounts granted to patients of the center for the most recent calendar year to the total amount of discounts granted by all centers in North Dakota during the most recent calendar year as reported on the federal uniform data system report in conformance with the bureau of primary health care program expectations policy information notice 98-23, except one federally qualified health center may receive no more than 50 percent of the total amount of grants awarded under this subsection.

**SECTION 2. LEGISLATIVE MANAGEMENT STUDY - FEDERALLY QUALIFIED HEALTH CARE CENTER EXPANSION.** During the 2023-24 interim, the legislative management shall consider studying the expansion of federally qualified health care centers. The study must include consideration of increasing the number of federally qualified health care centers in the state and improving federally qualified health care center collaboration with local public health units. The legislative management shall report its findings and recommendations, along with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

Approved April 12, 2023

Filed April 13, 2023

## CHAPTER 61

### SENATE BILL NO. 2183

(Senators Wanzek, Klein, Weber)  
(Representatives Brandenburg, Kempenich, Mitskog)

AN ACT to provide an appropriation to the adjutant general for snow removal grants; to provide for a report; and to declare an emergency.

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

#### SECTION 1. APPROPRIATION - 2021-23 BIENNIUM - ADJUTANT GENERAL - SNOW REMOVAL GRANTS - REPORT TO LEGISLATIVE MANAGEMENT.

1. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$20,000,000, or so much of the sum as may be necessary, to the adjutant general for the purpose of providing emergency snow removal grants to tribal governments, counties, cities, and townships, for the period beginning with the effective date of this Act and ending June 30, 2023. Of the \$20,000,000, up to \$15,000,000 is available for early season emergency snow removal grants under subsection 2, and any remaining amounts are available for full season emergency snow removal grants under subsection 3.
2. A tribal government, county, city, or township may apply to the department of emergency services for an early season emergency snow removal grant for reimbursement of up to sixty percent of the snow removal costs incurred by the tribal government, county, city, or township for the period of October 1, 2022, through December 31, 2022, which exceeded one hundred fifty percent of the average snow removal cost for the three-month period of October through December for the four lowest cost years during the years 2017 through 2021.
3. A tribal government, county, township, or city may apply to the department of emergency services for a full season emergency snow removal grant for reimbursement of up to sixty percent of the snow removal costs incurred by the tribal government, county, city, or township for the period of October 1, 2022, through April 30, 2023, which exceeded one hundred fifty percent of the average snow removal cost for the seven-month period of October to April for the four lowest cost years for those years during the period beginning October 1, 2017, through April 30, 2022.
4. Each tribal government, county, city, or township requesting reimbursement under this section shall submit the request in accordance with guidelines developed by the department of emergency services. An award under subsection 3 must be reduced by any amount awarded under subsection 2. A tribal government, county, city, or township may not be required to return any funds awarded under subsection 2 due to the calculation completed under subsection 3.

5. The department of emergency services shall distribute the grants under this section before June 30, 2023, and shall report to the legislative management regarding the grants awarded.

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

Approved April 4, 2023

Filed April 4, 2023

## CHAPTER 62

### SENATE BILL NO. 2200

(Senators Sorvaag, Luick, Meyer)  
(Representatives Mock, Pyle, Swiontek)

AN ACT to provide an appropriation to the department of public instruction for North Dakota governor's schools.

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

**SECTION 1. APPROPRIATION - DEPARTMENT OF PUBLIC INSTRUCTION - NORTH DAKOTA GOVERNOR'S SCHOOLS.** 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 public instruction for the purpose of providing grants for North Dakota governor's schools at North Dakota state university and university of North Dakota, for the biennium beginning July 1, 2023, and ending June 30, 2025.

1. The department shall conduct North Dakota governor's schools once a summer alternating annually between North Dakota state university and university of North Dakota.
2. The department shall award the grants based on providing an average cost of \$5,000 per student attending the schools each year not to exceed a total of \$250,000 to each university for each year of the biennium.
3. The governor's schools program must provide programs related to science, technology, engineering, mathematics, energy law, mental health, education, and health sciences.
4. The department shall name codirectors at each university to ensure continued collaboration of the schools at both campuses.
5. Funds appropriated in this section may be used only for defraying expenses for students while on campus, including housing, dining, resident assistants, program directors, instructors, and faculty research sponsors.

Approved April 21, 2023

Filed April 24, 2023

## CHAPTER 63

### SENATE BILL NO. 2240

(Senators Burckhard, Hogue, Meyer)  
(Representatives Bellew, Pyle, M. Ruby)

AN ACT to provide an appropriation to the department of commerce for the base retention grant program.

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

**SECTION 1. APPROPRIATION - DEPARTMENT OF COMMERCE - BASE RETENTION GRANT PROGRAM - ONE-TIME FUNDING.** 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 commerce for the purpose of providing base retention grant funding to communities with an air force base or air national guard facilities, for the biennium beginning July 1, 2023, and ending June 30, 2025. Of the funding appropriated in this section, \$500,000 is to be distributed to eligible organizations in Minot and \$500,000 is to be distributed equally to eligible organizations in Grand Forks and Fargo. This funding is considered a one-time funding item.

Approved May 8, 2023

Filed May 9, 2023

## CHAPTER 64

### SENATE BILL NO. 2273

(Senators Myrdal, Hogan, Klein, Vedaa)  
(Representatives Hanson, Monson)

AN ACT to provide an appropriation to the department of commerce for a rural grocery store sustainability and food access expansion pilot grant program.

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

**SECTION 1. APPROPRIATION - DEPARTMENT OF COMMERCE - RURAL GROCERY STORE SUSTAINABILITY AND FOOD ACCESS EXPANSION PILOT GRANTS - ONE-TIME FUNDING.** 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 commerce for the purpose of establishing a pilot program to provide grants for the preservation of rural grocery stores and increasing the availability of food access in the state, for the biennium beginning July 1, 2023, and ending June 30, 2025. The department of commerce shall establish guidelines to award funding under this section. This funding is considered a one-time funding item.

Approved April 21, 2023

Filed April 24, 2023

# GENERAL PROVISIONS

## CHAPTER 65

### HOUSE BILL NO. 1038

(Legislative Management)  
(Judiciary Committee)

AN ACT to create and enact a new subdivision to subsection 1 of section 27-20.2-21 of the North Dakota Century Code, relating to technical corrections and improper, inaccurate, redundant, missing, or obsolete references; and to amend and reenact subsection 9 of section 12.1-31-01.2, subsection 8 of section 12.1-31.2-01, subsection 1 of section 15-08-19.2, subsection 5 of section 15-08-19.3, section 15-11-37, paragraph 1 of subdivision a of subsection 2 of section 19-24.1-01, paragraph 1 of subdivision b of subsection 2 of section 19-24.1-01, subsection 8 of section 23-09-01, subsections 24 and 34 of section 26.1-05-19, subsection 7 of section 26.1-17-33.1, subsection 6 of section 32-19-41, sections 37-01-16 and 39-06-32, subsection 4 of section 39-06-33, subdivision i of subsection 2 of section 39-06-49, subsection 5 of section 39-06.1-11, sections 40-34-13 and 40-35-02, subsection 11 of section 43-23-06.1, sections 54-21.3-05, 57-15-06, and 57-15-08, and subsection 6 of section 61-32-03.1 of the North Dakota Century Code, relating to technical corrections and improper, inaccurate, redundant, missing, or obsolete references; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 9 of section 12.1-31-01.2 of the North Dakota Century Code is amended and reenacted as follows:

9. If the respondent knows of an order issued under subsections 4 and 5, or subsection 6, violation of the order is a class A misdemeanor and also constitutes contempt of court. A second or subsequent violation of a protection order is a class C felony. If the existence of an order issued under subsection 34, or subsections 45 and 56 can be verified by a peace officer, the officer, without a warrant, may arrest and take into custody an individual whom the peace officer has probable cause to believe has violated the order.

**SECTION 2. AMENDMENT.** Subsection 8 of section 12.1-31.2-01 of the North Dakota Century Code is amended and reenacted as follows:

8. If the respondent knows of an order issued under subsection 4 or 5, violation of the order is a class A misdemeanor. If the existence of an order issued under subsection 34 or 45 can be verified by a peace officer, the officer, without a warrant, may arrest and take into custody an individual whom the peace officer has probable cause to believe has violated the order.

**SECTION 3. AMENDMENT.** Subsection 1 of section 15-08-19.2 of the North Dakota Century Code is amended and reenacted as follows:

1. Nonvehicular public access to leased and unleased trust lands is allowed if in the best interests of the trusts, unless:
  - a. Specifically prohibited by the commissioner of university and school lands; or
  - b. A lessee of any lands under the control of the board of university and school lands posts the land with signage issued by the department of trust lands, which:
    - (1) Requires notification to the lessee before entry by the public; or
    - (2) Closes the trust lands to all public access.

**SECTION 4. AMENDMENT.** Subsection 5 of section 15-08-19.3 of the North Dakota Century Code is amended and reenacted as follows:

5. When hunting under a special permit issued by the director of the game and fish department to shoot from a stationary vehicle and with written permission from the lessee and commissioner of university and school lands.

**SECTION 5. AMENDMENT.** Section 15-11-37 of the North Dakota Century Code is amended and reenacted as follows:

**15-11-37. Acceptance of gifts by dean of medical school university of North Dakota school of medicine and health sciences - Continuing appropriation.**

Notwithstanding any other provisions of law, the dean of the university of North Dakota medical school of medicine and health sciences may accept and receive gifts, grants, bequests, and donations that are hereby appropriated for use by the university of North Dakota medical school of medicine and health sciences.

<sup>37</sup> **SECTION 6. AMENDMENT.** Paragraph 1 of subdivision a of subsection 2 of section 19-24.1-01 of the North Dakota Century Code is amended and reenacted as follows:

- (1) During a thirty-day period, a registered qualifying patient may not purchase or have purchased by a registered designated caregiver more than two and one-half ounces [70.87 grams] of dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form.

**SECTION 7. AMENDMENT.** Paragraph 1 of subdivision b of subsection 2 of section 19-24.1-01 of the North Dakota Century Code is amended and reenacted as follows:

- (1) During a thirty-day period a registered qualifying patient may not purchase or have purchased by a registered designated caregiver more than six ounces [170.01 grams] of dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form.

<sup>38</sup> **SECTION 8. AMENDMENT.** Subsection 8 of section 23-09-01 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>37</sup> Section 19-24.1-01 was also amended by section 1 of Senate Bill No. 2068, chapter 213, and section 2 of Senate Bill No. 2102, chapter 214.

8. "Lodging establishment" includes every building or structure, or any part thereof, which is kept, used, maintained, or held out to the public as a place where sleeping accommodations are furnished for pay to transient guests. The term does not include a facility providing personal care services directly or through contract services as ~~defined~~ provided under section 23-09.3-01 or 50-32-01.

<sup>39</sup> **SECTION 9. AMENDMENT.** Subsection 24 of section 26.1-05-19 of the North Dakota Century Code is amended and reenacted as follows:

24. First mortgage bonds on improved city real estate in any state, issued by a corporation duly incorporated under the laws of any state of the United States, if the loans on the real estate are made in accordance with the requirements as to first mortgage loans in subsection ~~24~~23.

<sup>40</sup> **SECTION 10. AMENDMENT.** Subsection 34 of section 26.1-05-19 of the North Dakota Century Code is amended and reenacted as follows:

34. Foreign investments of substantially the same types as those permitted under subsections ~~19 and 20 and 21~~,

a. Under this subsection, a foreign investment is subject to the following restrictions and limitations:

a. (1) Foreign investments issued, assumed, guaranteed, or insured by a single person may not exceed three percent of the insurance company's admitted assets.

b. (2) Foreign investments in a single foreign jurisdiction may not exceed in the aggregate ten percent of the insurance company's admitted assets as to a foreign jurisdiction that has a sovereign debt rating of one as determined by the securities valuation office of the national association of insurance commissioners or three percent of the insurance company's admitted assets as to any other foreign jurisdiction.

e. (3) Foreign investments may not exceed in the aggregate twenty percent of the insurance company's admitted assets.

b. Investments acquired under this subsection ~~shall~~must be aggregated with investments of the same type made under subsection ~~24~~20 for purposes of determining compliance with the limitations contained in that subsection.

c. For purposes of this subsection, a foreign investment means an investment in a foreign jurisdiction or an investment in a legal entity domiciled in a foreign jurisdiction. A foreign jurisdiction is any jurisdiction other than the United States, any state or possession of the United States, Canada, or any province of Canada.

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<sup>38</sup> Section 23-09-01 was also amended by section 1 of Senate Bill No. 2082, chapter 242.

<sup>39</sup> Section 26.1-05-19 was also amended by section 10 of House Bill No. 1038, chapter 65.

<sup>40</sup> Section 26.1-05-19 was also amended by section 9 of House Bill No. 1038, chapter 65.

**SECTION 11. AMENDMENT.** Subsection 7 of section 26.1-17-33.1 of the North Dakota Century Code is amended and reenacted as follows:

7. A nonprofit mutual insurance company may avail itself of the additional investment authority under chapter 26.1-10. Upon approval by the commissioner after a showing of good cause by the nonprofit mutual insurance company, aggregate investments in all subsidiaries of the company under subsection ~~2420~~ of section 26.1-05-19 and under chapter 26.1-10 may exceed an amount equal to twenty-five percent of the company's admitted assets.

<sup>41</sup> **SECTION 12.** A new subdivision to subsection 1 of section 27-20.2-21 of the North Dakota Century Code is created and enacted as follows:

The information technology department to the extent authorized by the supreme court for use in the statewide longitudinal data system.

**SECTION 13. AMENDMENT.** Subsection 6 of section 32-19-41 of the North Dakota Century Code is amended and reenacted as follows:

6. If the record title owner cannot be located, any remainder from the proceeds of a sale must be delivered to the administrator of the state abandoned property office in accordance with chapter ~~47-30-447-30.2~~.

**SECTION 14. AMENDMENT.** Section 37-01-16 of the North Dakota Century Code is amended and reenacted as follows:

**37-01-16. Unlawful conversion of military property - Unlawful wearing of uniforms and devices indicating rank - Penalty.**

AnyIt is a class B misdemeanor for a person who shallto:

1. Secretly sell, dispose of, offer for sale, purchase, retain after a demand made by a commissioned officer of the national guard, or in any manner pawn or pledge any arms, uniforms, equipment, or other military property issued under the provisions of this title; or
2. Wear any uniform or any device, strap, knot, or insignia of any design or character used as a designation of grade, rank, or office, prescribed by law, or by general regulation duly promulgated, for the use of the national guard, or any device, strap, knot, or insignia similar thereto, unless the person is a member of the army or navy of the United States or of the national guard of this or any other state, a member of an association wholly composed of soldiers who have been honorably discharged from the service of the United States, or a member of the order of sons of veterans;

is guilty of a class B misdemeanor.

**SECTION 15. AMENDMENT.** Section 39-06-32 of the North Dakota Century Code is amended and reenacted as follows:

**39-06-32. Authority to suspend licenses.**

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<sup>41</sup> Section 27-20.2-21 was also amended by section 11 of House Bill No. 1137, chapter 294.

1. The director may suspend the operator's license of an individual, after hearing, upon proof by a fair preponderance of the evidence, that any of the following apply to the licensee:
  - a-1. Commission of an offense for which mandatory revocation of license is required upon conviction.
  - b-2. Incompetence to drive a motor vehicle.
  - e-3. Unlawful or fraudulent use of an operator's license.
  - d-4. Refusal to submit to an implied consent chemical test on an Indian reservation or in another state. For purposes of this subsection, the specific requirements for establishing a refusal used on the Indian reservation or in the other state may not be considered, and photostatic copies of the records of the other jurisdiction's driver's licensing authority are sufficient evidence of the refusal whether those copies are certified. The suspension must be for the same length of time as the revocation in section 39-20-04. If the refusal arose out of an arrest or stop of an individual while operating a commercial motor vehicle, the period of suspension must be the same as the period of revocation provided in section 39-06.2-10.
  - 2-5. Failure, as shown by the certificate of the court, to pay a fine or serve any other sentence as ordered by a court upon conviction for any criminal traffic offense.
  - 3-6. Failure, as shown by the certificate of the court, to appear in court or post and forfeit bond after signing a promise to appear, if signing is required by law, in violation of section 39-06.1-04, willful violation of a written promise to appear in court, in violation of section 39-07-08, or violation of equivalent ordinances or laws in another jurisdiction. Upon resolution by the operator of the underlying cause for a suspension under this subsection, as shown by the certificate of the court, the director shall record the suspension separately on the driving record. This separate record is not available to the public.
  - 4-7. An administrative decision on an Indian reservation or in another state that the licensee's privilege to drive on that Indian reservation or in that state is suspended or revoked because of a violation of that Indian reservation's or state's law forbidding motor vehicle operation with 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, or because of a violation of that Indian reservation's or state's law forbidding the driving or being in actual physical control of a commercial motor vehicle while having an alcohol concentration of at least four one-hundredths of one percent by weight. The specific requirements for establishing the violation on the Indian reservation or in the other state may not be considered and certified copies of the records of the Indian reservation's or other state's driver's licensing authority are sufficient evidence of the violation. The suspension must be for the same duration as the suspension in section 39-20-04.1, if the violation does not involve a commercial motor vehicle. If the violation involves a commercial motor vehicle, the period of suspension must be the same as the period of suspension provided in section 39-06.2-10. For purposes of this section, originals, photostatic copies, or electronic transmissions of the records of the driver's licensing or other authority of the other jurisdiction are sufficient evidence whether they are certified copies.

- ~~5-8.~~ Conviction of an offense under this title and it appears from the director's records that the offense contributed to causing an accident which resulted in death or serious personal injury or serious property damage. A suspension may not be imposed if the individual has been sanctioned for the same offense under section 39-06-31.

**SECTION 16. AMENDMENT.** Subsection 4 of section 39-06-33 of the North Dakota Century Code is amended and reenacted as follows:

4. If a suspension is ordered under ~~subdivision b~~ of subsection ~~4~~<sup>2</sup> of section 39-06-32, the notice must include a specific description of the conditions which led to the conclusion that the licensee is incompetent to drive a motor vehicle. If during the suspension those conditions dissipate, the licensee may request another hearing on the issue of competence to drive a motor vehicle. The hearing must be held in the manner required under subsections 2 and 3 for the original suspension.

**SECTION 17. AMENDMENT.** Subdivision i of subsection 2 of section 39-06-49 of the North Dakota Century Code is amended and reenacted as follows:

- i. Reinstatement after suspension is fifty dollars unless the suspension was the result of a suspension under subsection 3, 4, or 6 of section 39-06-03 or ~~subdivision b~~ of subsection ~~4~~<sup>2</sup> of section 39-06-32, then the fee is twenty-five dollars, or unless the suspension was a result of a violation under section 39-08-01 or chapter 39-20, then the fee is one hundred dollars.

<sup>42</sup> **SECTION 18. AMENDMENT.** Subsection 5 of section 39-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

5. The director may not issue a temporary restricted license for a period of license revocation or suspension imposed under section 39-06-31. A temporary restricted license may be issued for suspensions ordered under subsection ~~4~~<sup>7</sup> of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct.

**SECTION 19. AMENDMENT.** Section 40-34-13 of the North Dakota Century Code is amended and reenacted as follows:

**40-34-13. Residue of money remaining after payment of bonds - Disposal.**

After the principal and interest on the bonds secured by a first mortgage or deed of trust on an improvement as provided in this chapter have been fully paid, as the governing body of the municipality or the respective governing bodies of the municipalities may direct by resolution, the revenues of such utility and improvement set apart for the payment of such bonds may be:

1. Used for the repair, improvement, or extension of such utility or improvement;
2. Credited to the interest and sinking fund established for the retirement and payment of the general liability bonds; or

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<sup>42</sup> Section 39-06.1-11 was also amended by section 4 of House Bill No. 1280, chapter 348, section 2 of House Bill No. 1280, chapter 348, and section 3 of House Bill No. 1280, chapter 348.

3. Transferred to the general fund;

~~as the governing body of the municipality or the respective governing bodies of the municipalities may direct by resolution.~~

**SECTION 20. AMENDMENT.** Section 40-35-02 of the North Dakota Century Code is amended and reenacted as follows:

**40-35-02. Undertaking defined.**

The term "undertaking", as used in this chapter, unless a different meaning clearly appears from the context, ~~means:~~

1. Means systems, plants, works, instrumentalities, and properties used in revenue-producing undertakings, or any combination of two or more of such undertakings, which are used or useful in connection with:
  1. a. The obtaining of a water supply and the conservation, treatment, distribution, and disposal of water for public and private uses;
  2. b. The collection, treatment, and disposal of sewage, waste, and storm water;
  3. c. The generation, production, transmission, and distribution of natural, artificial, or mixed gas, or electric energy, for lighting, heating, and power for public and private uses;
  4. d. The operation of parking lots, trailer courts, and facilities for motor vehicles and house trailers;
  5. e. The purchase, acquisition, or establishment, maintenance, and operation of a public transportation system;
  6. f. The purchase, acquisition, construction, establishment, maintenance, and operation of an airport and the facilities and services in connection therewith; and
  7. g. The purchase, acquisition, construction, maintenance, and operation of a hospital;

together with and

2. Includes all parts of any such undertaking and all appurtenances ~~thereto~~ to the undertakings, including lands, easements, rights in land, water rights, contract rights, franchises, approaches, dams, reservoirs, generating stations, sewage disposal plants, intercepting sewers, trunk connections, other sewer and water mains, filtration works, pumping stations, and equipment, and facilities in and upon such buildings and lands.

<sup>43</sup> **SECTION 21. AMENDMENT.** Subsection 11 of section 43-23-06.1 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>43</sup> Section 43-23-06.1 was also amended by section 1 of House Bill No. 1190, chapter 387.

11. "Real estate salesperson" means any person that for a fee, compensation, salary, or other consideration, or in the expectation or upon the promise of that compensation, is employed or engaged by a licensed real estate broker to do any act or deal in any transaction as provided in subsection 69 for or on behalf of such licensed real estate broker.

**SECTION 22. AMENDMENT.** Section 54-21.3-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-21.3-05. Enforcement of code by city, township, or county - Relinquishment.**

A city or township may administer and enforce the state building code only within its jurisdictional area. A county may administer and enforce the state building code within those areas of the county in which the state building code is not administered by a city or township. Cities and townships may relinquish their authority to administer and enforce the state building code to the county in which they are located in the manner provided by section ~~41-33-2054-40.5-03~~. The governing body of a city, township, or county electing to administer and enforce the state building code may designate an enforcement agency. Cities, townships, and counties may provide by agreement for joint administration and enforcement and may contract for private enforcement of the state building code.

**SECTION 23. AMENDMENT.** Section 57-15-06 of the North Dakota Century Code is amended and reenacted as follows:

**57-15-06. County general fund levy.**

The board of county commissioners may levy property taxes for county general fund purposes at a tax rate not exceeding sixty mills per dollar of taxable valuation of property in the county.

~~A county that levied more than sixty mills for taxable year 2015 for the combined number of mills levied for general fund purposes plus the number of mills levied for other purposes which were combined into the general fund for taxable years after 2014 may levy for general fund purposes for taxable year 2016 the same number of mills that was levied for those purposes for taxable year 2015. A county may levy for general fund purposes for taxable year 2017 sixty mills plus seventy five percent of the combined number of mills exceeding sixty that was levied for those purposes for taxable year 2015. A county may levy for general fund purposes for taxable year 2018 sixty mills plus fifty percent of the combined number of mills exceeding sixty that was levied for those purposes for taxable year 2015. A county may levy for general fund purposes for taxable year 2019 sixty mills plus twenty five percent of the combined number of mills exceeding sixty that was levied for those purposes for taxable year 2015.~~

Unless a specific exception is provided by statute, the county general fund levy limitation under this section applies to all property taxes the board of county commissioners is authorized to levy for general county purposes.

**SECTION 24. AMENDMENT.** Section 57-15-08 of the North Dakota Century Code is amended and reenacted as follows:

**57-15-08. General fund levy limitations in cities.**

The aggregate amount levied for city general fund purposes may not exceed an amount produced by a levy of one hundred five mills on the taxable valuation of

property in the city. A city, when authorized by a majority vote of the electors of the city voting on the question at a regularly scheduled or special election called for such purpose pursuant to a resolution approved by the governing body of the city, may increase the maximum mill levy for general city purposes by not more than ten mills.

~~A city that levied more than one hundred five mills for taxable year 2015 in the combined number of mills levied for general fund purposes plus the number of mills levied for other purposes which were combined into the general fund for taxable years after 2014 may levy for general fund purposes for taxable year 2016 the same number of mills that was levied for those purposes for taxable year 2015. A city may levy for general fund purposes for taxable year 2017 one hundred five mills plus seventy five percent of the combined number of mills exceeding one hundred five that was levied for those purposes for taxable year 2015. A city may levy for general fund purposes for taxable year 2018 one hundred five mills plus fifty percent of the combined number of mills exceeding one hundred five that was levied for those purposes for taxable year 2015. A city may levy for general fund purposes for taxable year 2019 one hundred five mills plus twenty five percent of the combined number of mills exceeding one hundred five that was levied for those purposes for taxable year 2015.~~

<sup>44</sup> **SECTION 25. AMENDMENT.** Subsection 6 of section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

6. Upon approval of a permit, the district shall forward notice of the approved permit and the downstream flow map to the ~~state engineer~~department of water resources and to each landowner who owns property within one mile [1.61 kilometers] downstream of each project outlet according to the tax rolls of the county in which the property is located, unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers] downstream of the proposed outlet, in which case the district shall provide notice to landowners with property between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The district shall send copies of the notice by first-class mail, attested by an affidavit of mailing. The district does not need to provide copies of the permit application under this subsection.

Approved March 23, 2023

Filed March 23, 2023

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<sup>44</sup> Section 61-32-03.1 was also amended by section 35 of Senate Bill No. 2036, chapter 569.

## CHAPTER 66

### HOUSE BILL NO. 1474

(Representatives S. Olson, D. Anderson, Christensen, Kasper, Koppelman, Prichard, Steiner)  
(Senator Boehm)

AN ACT to amend and reenact section 1-01-49, subsection 3 of section 12.1-36.1-01 of the North Dakota Century Code as created by section 1 of House Bill No. 1254, as approved by the sixty-eighth legislative assembly, subsection 2 of section 15-10.6-01 of the North Dakota Century Code as created by section 1 of House Bill No. 1489, as approved by the sixty-eighth legislative assembly, subsection 2 of section 15.1-41-01 of the North Dakota Century Code as created by section 1 of House Bill No. 1249, as approved by the sixty-eighth legislative assembly, subsection 20 of section 23-02.1-01 of the North Dakota Century Code as amended in section 1 of House Bill No. 1139, as approved by the sixty-eighth legislative assembly, and subsection 7 of section 51-35-01 of the North Dakota Century Code, relating to the definition of female, male, sex, and scrap metal dealer.

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

<sup>45</sup> **SECTION 1. AMENDMENT.** Section 1-01-49 of the North Dakota Century Code is amended and reenacted as follows:

##### **1-01-49. Other general definitions.**

As used in this code, unless the context otherwise requires or unless otherwise defined:

1. "Depose" includes every mode of written statement under oath or affirmation.
2. "Executor" includes administrator and "administrator" includes executor.
3. "Female" means a girl, woman, or an individual whose biological reproductive system is developed to produce ova.
4. "Individual" means a human being.
5. "Male" means a boy, man, or an individual whose biological reproductive system is developed to produce sperm.
- ~~4-6.~~ "Oath" includes "affirmation".
- ~~5-7.~~ "Organization" includes a foreign or domestic association, business trust, corporation, enterprise, estate, joint venture, limited liability company, limited liability partnership, limited partnership, partnership, trust, or any legal or commercial entity.

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<sup>45</sup> Section 1-01-49 was also amended by section 1 of House Bill No. 1361, chapter 67.

- ~~6-8.~~ "Partnership" includes a limited liability partnership registered under chapter 45-22.
- ~~7-9.~~ "Penitentiary" includes any affiliated facilities.
- ~~8-10.~~ "Person" means an individual, organization, government, political subdivision, or government agency or instrumentality.
- ~~9-11.~~ "Personal property" includes money, goods, chattels, things in action, and evidences of debt.
- ~~10-12.~~ "Preceding" and "following" when used by way of reference to a chapter or other part of a statute means the next preceding or next following chapter or other part.
- ~~11-13.~~ "Primary sector business" means an individual, corporation, limited liability company, partnership, or association certified by the department of commerce division of economic development and finance which through the employment of knowledge or labor adds value to a product, process, or service which results in the creation of new wealth.
- For purposes of this subsection, "new wealth" means revenues generated by a business in this state through the sale of products or services to:
- a. Customers outside of this state; or
  - b. Customers in this state if the products or services were previously unavailable or difficult to obtain from a business in this state.
- ~~12-14.~~ "Process" means a writ or summons issued in the course of judicial proceedings.
- ~~13-15.~~ "Property" includes property, real and personal.
- ~~14-16.~~ "Real property" shall be coextensive with lands, tenements, and hereditaments.
- ~~15-17.~~ "Rule" includes regulation.
- ~~16-18.~~ "Sex" means the biological state of being male or female, based on the individual's nonambiguous sex organs, chromosomes, or endogenous hormone profiles at birth.
- ~~17-19.~~ "Signature" or "subscription" includes "mark" when the person cannot write, the person's name being written near it and written by a person who writes that person's own name as a witness.
- ~~18-20.~~ "State" when applied to the different parts of the United States, includes the District of Columbia and the territories.
- ~~19-21.~~ "Testify" includes every mode of oral statement under oath or affirmation.
- ~~20-22.~~ "United States" includes the District of Columbia and the territories.
- ~~21-23.~~ "Will" includes codicils.

21-24. "Writ" means an order or precept in writing, issued in the name of the state or of a court or judicial officer.

<sup>46</sup> **SECTION 2. AMENDMENT.** Subsection 3 of section 12.1-36.1-01 of the North Dakota Century Code as created by section 1 of House Bill No. 1254, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

3. "Sex" means the biological state of being female or male, based on an individual's nonambiguous sex organs, chromosomes, and/or endogenous hormone profile at birth.

<sup>47</sup> **SECTION 3. AMENDMENT.** Subsection 2 of section 15-10.6-01 of the North Dakota Century Code as created by section 1 of House Bill No. 1489, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

2. "Sex" means the biological state of being female or male, based on an individual's nonambiguous sex organs, chromosomes, and/or endogenous hormone profile at birth.

<sup>48</sup> **SECTION 4. AMENDMENT.** Subsection 2 of section 15.1-41-01 of the North Dakota Century Code as created by section 1 of House Bill No. 1249, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

2. "Sex" means the biological state of being female or male, based on an individual's nonambiguous sex organs, chromosomes, and/or endogenous hormone profile at birth.

<sup>49</sup> **SECTION 5. AMENDMENT.** Subsection 20 of section 23-02.1-01 of the North Dakota Century Code as amended in section 1 of House Bill No. 1139, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

20. "Sex" means the biological state of being female or male, based on an individual's nonambiguous sex organs, chromosomes, and/or endogenous hormone profile at birth.

<sup>50</sup> **SECTION 6. AMENDMENT.** Subsection 7 of section 51-35-01 of the North Dakota Century Code is amended and reenacted as follows:

7. "Scrap metal dealer" means a person, as defined in ~~subsection 8 of section 1-01-49~~, engaged in the business of purchasing, selling, trading, or bartering scrap metal, and includes all employees of the scrap metal dealer.

Approved May 8, 2023

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<sup>46</sup> Section 12.1-36.1-01 was created by section 1 of House Bill No. 1254, chapter 136.

<sup>47</sup> Section 15-10.6-01 was created by section 1 of House Bill No. 1489, chapter 158.

<sup>48</sup> Section 15.1-39-01 was created by section 1 of House Bill No. 1249, chapter 198.

<sup>49</sup> Section 23-02.1-01 was also amended by section 1 of House Bill No. 1139, chapter 234, section 26 of House Bill No. 1165, chapter 229, and section 1 of Senate Bill No. 2379, chapter 233.

<sup>50</sup> Section 51-35-01 was also amended by section 1 of Senate Bill No. 2299, chapter 449.

Filed May 9, 2023

## CHAPTER 67

### HOUSE BILL NO. 1361

(Representatives Christensen, Bellew, Heilman, Hoverson, Kasper, Kempenich,  
Koppelman, Toman)  
(Senators Larsen, Magrum, Vedaa, Wobbema)

AN ACT to amend and reenact subsection 8 of section 1-01-49 of the North Dakota Century Code, relating to the definition of person; and to declare an emergency.

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

<sup>51</sup> **SECTION 1. AMENDMENT.** Subsection 8 of section 1-01-49 of the North Dakota Century Code is amended and reenacted as follows:

8. "Person" means an individual, organization, government, political subdivision, or government agency or instrumentality. The term does not include environmental elements, artificial intelligence, an animal, or an inanimate object.

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

Approved April 11, 2023

Filed April 12, 2023

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<sup>51</sup> Section 1-01-49 was also amended by section 1 of House Bill No. 1474, chapter 66.

## CHAPTER 68

### HOUSE BILL NO. 1173

(Representatives Prichard, K. Anderson, Dyk, Hauck, Kasper, Novak, Steiner,  
Timmons)  
(Senators Hogue, Larson, Myrdal)

AN ACT to create and enact a new section to chapter 1-03 of the North Dakota Century Code, relating to the annual observance of Right-To-Life Day.

#### **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:

#### **Right-To-Life Day.**

To celebrate the right-to-life, reaffirm the dignity and value of every human being, and to give thanks for the gift of life, the twenty-second of January of each year is designated and established as Right-To-Life Day.

Approved April 6, 2023

Filed April 10, 2023

## CHAPTER 69

### SENATE BILL NO. 2335

(Senators K. Roers, Dever, Lee)  
(Representatives Beltz, Nelson)

AN ACT to create and enact a new section to chapter 1-03 of the North Dakota Century Code, relating to establishing an annual day of awareness for fetal alcohol spectrum disorder; to amend and reenact subsection 3 of section 25-01.2-01 of the North Dakota Century Code, relating to fetal alcohol spectrum disorder; and to repeal section 50-06-32 of the North Dakota Century Code, relating to the autism spectrum disorder task force.

#### 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:

##### **Fetal alcohol spectrum disorder awareness day.**

To celebrate the life of all affected by fetal alcohol spectrum disorder, reaffirm the dignity and value of every human being, and to create awareness of the number of people affected by the disorder, the ninth day of September of each year is designated and established as fetal alcohol spectrum disorder awareness day for the state of North Dakota.

**SECTION 2. AMENDMENT.** Subsection 3 of section 25-01.2-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Developmental disability" means a severe, chronic disability of an individual which:
  - a. Is attributable to a mental or physical impairment or combination of mental and physical impairments, including Down syndrome and fetal alcohol spectrum disorders, including fetal alcohol syndrome, partial fetal alcohol syndrome, and alcohol-related neurodevelopmental disorder;
  - b. Is manifested before the individual attains age twenty-two;
  - c. Is likely to continue indefinitely;
  - d. Results in substantial functional limitations in three or more of the following areas of major life activity:
    - (1) Self-care;
    - (2) Receptive and expressive language;
    - (3) Learning;
    - (4) Mobility;

- (5) Self-direction;
  - (6) Capacity for independent living; and
  - (7) Economic sufficiency; and
- e. Reflects the individual's needs for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

<sup>52</sup> **SECTION 3. REPEAL.** Section 50-06-32 of the North Dakota Century Code is repealed.

Approved May 4, 2023

Filed May 5, 2023

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<sup>52</sup> Section 50-06-32 was amended by section 118 of House Bill No. 1165, chapter 229.

# AERONAUTICS

## CHAPTER 70

### SENATE BILL NO. 2053

(Transportation Committee)  
(At the request of the Highway Patrol)

AN ACT to amend and reenact sections 2-05-14, 11-19.1-08, 11-19.1-10, paragraph 2 of subdivision a of subsection 1 of section 15-39.1-10.3, subdivision a of subsection 2 of section 15-39.1-10.3, sections 20.1-13-14 and 24-15-01, subdivision e of subsection 5 of section 28-32-08.1, sections 39-03-01, 39-03-03, 39-03-04, 39-03-05, 39-03-06, 39-03-07, 39-03-11, subsection 4 of section 39-03.1-01, sections 39-03.1-02, 39-03.1-10.4, 39-03.1-27, 39-07-12, 39-07-13, paragraph 2 of subdivision a of subsection 1 of section 54-52-17.2, subsection 2 of section 54-52.1-03, subdivision b of subsection 1 of section 54-52.1-03.2, subdivision a of subsection 1 of section 54-52.1-03.3, and subsection 2 of section 54-52.1-03.3 of the North Dakota Century Code, relating to terminology pertaining to state troopers.

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

**SECTION 1. AMENDMENT.** Section 2-05-14 of the North Dakota Century Code is amended and reenacted as follows:

##### **2-05-14. Enforcement of aeronautics laws.**

The commission, its members, the director, officers, and the employees of the commission, and every ~~state highway patrol patrolman~~ trooper and all peace officers shall enforce and assist in the enforcement of this chapter.

**SECTION 2. 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.**

The coroner shall keep full and complete records. All records must be kept in the office of the coroner if the coroner maintains an office as coroner. If the coroner maintains no separate office, the records must be kept in the office of the recorder of the county, unless the board of county commissioners designates a different official. The records must be properly indexed, stating the name, if known, of every deceased 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 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~~ patrol troopers 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. 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 are the property of the county and are public records.

**SECTION 3. AMENDMENT.** Section 11-19.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**11-19.1-10. Deceased human bodies to be held pending investigation.**

All deceased human bodies in the custody of the coroner 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 patrol troopers on duty in that county, or the sheriff has reached a decision that it is not necessary to hold the body longer to enable the coroner to decide on a diagnosis, giving a reasonable and true cause of death, or that the body is no longer necessary to assist any one of those officials in their duties.

<sup>53</sup> **SECTION 4. AMENDMENT.** Paragraph 2 of subdivision a of subsection 1 of section 15-39.1-10.3 of the North Dakota Century Code is amended and reenacted as follows:

(2) The highway patrolmen's patrol troopers' retirement system.

**SECTION 5. AMENDMENT.** Subdivision a of subsection 2 of section 15-39.1-10.3 of the North Dakota Century Code is amended and reenacted as follows:

- a. If a teacher, who is eligible to participate in this fund, is also eligible to participate in an alternate retirement system, the employee is a member of the teachers' fund for retirement for duties covered under this fund, and the employee is also a member of the public employees retirement system or highway patrolmen's patrol troopers' retirement system for duties covered by those alternate retirement systems. The employers shall pay the member and employer contributions at the rates currently existing for the applicable system.

**SECTION 6. AMENDMENT.** Section 20.1-13-14 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-13-14. Rules - Enforcement.**

Rules may be adopted pursuant to this chapter under chapter 28-32. Every game warden, sheriff's officer, or highway patrolman patrol trooper of this state has the authority to enforce the provisions of this chapter and in the exercise thereof has the authority to stop and board any vessel subject to this chapter.

**SECTION 7. AMENDMENT.** Section 24-15-01 of the North Dakota Century Code is amended and reenacted as follows:

**24-15-01. Definition.**

For the purpose of this chapter, a temporary roadblock means any structure, device, or means used by police, sheriffs, deputy sheriffs, game wardens, highway

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<sup>53</sup> Section 15-39.1-10.3 was also amended by section 1 of House Bill No. 1040, chapter 514.

~~patrolmen~~patrol troopers, agents of the federal bureau of investigation, or officers of the United States border patrol, for the purpose of controlling traffic through a point on a highway, road, or street, whereby all vehicles may be slowed or stopped.

**SECTION 8. AMENDMENT.** Subdivision e of subsection 5 of section 28-32-08.1 of the North Dakota Century Code is amended and reenacted as follows:

e. Highway patrolmen's~~patrol troopers'~~ retirement board.

**SECTION 9. AMENDMENT.** Section 39-03-01 of the North Dakota Century Code is amended and reenacted as follows:

**39-03-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Assistant superintendent" means the assistant highway patrol superintendent.
2. ~~"Patrolmen" means the members of the highway patrol including the superintendent and the assistant superintendent.~~
3. "Superintendent" means the state highway patrol superintendent.
3. "Troopers" means the members of the highway patrol including the superintendent and the assistant superintendent.

**SECTION 10. AMENDMENT.** Section 39-03-03 of the North Dakota Century Code is amended and reenacted as follows:

**39-03-03. ~~Patrolmen~~Troopers - Appointment - Removal - Duties.**

The superintendent, the assistant superintendent, and the ~~patrolmen~~troopers constitute the highway patrol. The highway patrol shall enforce the provisions of the laws of this state relating to the protection and use of highways and shall patrol the highways and cooperate with sheriffs and police in enforcing the laws regulating the operation of vehicles and the use of highways. All ~~patrolmen~~troopers and the assistant superintendent must be appointed by the superintendent. Each ~~patrolman~~trooper appointed is deemed a probationary employee for an initial period of six months, during which the ~~patrolman~~trooper must be placed under probationary training and service and is subject to an extension of an additional period of six months or dismissal at the will of the superintendent or the superintendent's designee. At the end of the probationary period, a probationary employee must either be taken off probationary status or dismissed. A nonprobationary employee employed in a regular, classified position is subject to removal for cause by the superintendent or the superintendent's designee, but the employee may appeal a dismissal under chapter 54-44.3 provided the removal of the assistant superintendent from the assistant superintendent position does not entitle that person to appeal the removal unless that person also is dismissed from the patrol.

**SECTION 11. AMENDMENT.** Section 39-03-04 of the North Dakota Century Code is amended and reenacted as follows:

**39-03-04. Qualifications of ~~patrolmen~~troopers - Veterans have preference.**

No person may be appointed as a ~~patrolman~~trooper unless the person has all of the following qualifications:

1. Has passed such physical examination and such other qualification test as may be required by the superintendent.
2. Is of good moral character and temperate habits.
3. Has been a citizen of the United States for not less than two years prior to the appointment.

Preference for appointment must be given at all times to honorably discharged veterans and citizens of the state of North Dakota, and all appointments must be made without regard to any political party affiliation of the applicant.

**SECTION 12. AMENDMENT.** Section 39-03-05 of the North Dakota Century Code is amended and reenacted as follows:

**39-03-05. Badge issued to patrolmentroopers - Contents of badge.**

The superintendent shall issue to each patrolmantrooper a badge of authority with the seal of this state in the center thereof. The term "North Dakota patrol" must encircle such seal and above the same must appear the designation of the position held by the person to whom such badge is issued. Each such badge must contain a unit number or symbol of rank. No badge may be issued to any person who is not a duly appointed and acting member of the highway patrol.

**SECTION 13. AMENDMENT.** Section 39-03-06 of the North Dakota Century Code is amended and reenacted as follows:

**39-03-06. Oath required of superintendent, assistant superintendent, and patrolmentroopers.**

The superintendent, assistant superintendent, and each patrolmantrooper, before entering upon the performance of the person's duties, shall take and file the oath prescribed by law for state officers.

**SECTION 14. AMENDMENT.** Section 39-03-07 of the North Dakota Century Code is amended and reenacted as follows:

**39-03-07. Salary of superintendent - Limitations.**

The salary of the superintendent must be within the amount appropriated for salaries by the legislative assembly. The salary of the assistant superintendent and each patrolmantrooper must be fixed by the superintendent, and must be paid in the same manner as other state employees are paid.

**SECTION 15. AMENDMENT.** Section 39-03-11 of the North Dakota Century Code is amended and reenacted as follows:

**39-03-11. Penalty for impersonating patrolmantrooper.**

Any person is guilty of a class A misdemeanor if:

1. Without authority, the person wears the badge of a member of the highway patrol, or a badge of similar design which would tend to deceive anyone;
2. The person impersonates a member of the highway patrol or other officer or employee of the highway patrol with intent to deceive anyone; or

3. Without authority, the person wears a uniform likely to be confused with the official uniform of the highway patrol.

**SECTION 16. AMENDMENT.** Subsection 4 of section 39-03.1-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Fund" means the North Dakota highway ~~patrolmen's~~patrol troopers' retirement fund.

**SECTION 17. AMENDMENT.** Section 39-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**39-03.1-02. North Dakota highway ~~patrolmen's~~patrol troopers' retirement system.**

A retirement system is hereby established for the members of the North Dakota highway patrol.

**SECTION 18. AMENDMENT.** Section 39-03.1-10.4 of the North Dakota Century Code is amended and reenacted as follows:

**39-03.1-10.4. Reduction in member and employer contributions.**

The required increase in the amount of member and employer contributions under sections 39-03.1-09 and 39-03.1-10 must be reduced to the rate in effect on July 1, 2013, effective on the July first that follows the first valuation of the highway ~~patrolmen's~~patrol troopers' retirement plan showing a ratio of the actuarial value of assets to the actuarial accrued liability of the highway ~~patrolmen's~~patrol troopers' retirement plan that is equal to or greater than one hundred percent.

**SECTION 19. AMENDMENT.** Section 39-03.1-27 of the North Dakota Century Code is amended and reenacted as follows:

**39-03.1-27. Legislative intent.**

The legislative assembly in recognition of the value of good employer-employee relationships and the need to recruit and retain qualified highway ~~patrolmen~~patrol troopers in this state, hereby declares its intent that the state should provide the comparable contribution for retirement of highway ~~patrolmen's~~patrol troopers' retirement system members as it provides for other state employees. It is the further intent of the legislative assembly that because of the increase in state contributions to the North Dakota highway ~~patrolmen's~~patrol troopers' retirement system, the members of such system shall not obligate the state to additional payments for federal social security benefits for such members.

**SECTION 20. AMENDMENT.** Section 39-07-12 of the North Dakota Century Code is amended and reenacted as follows:

**39-07-12. Garages to report.**

The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in a reportable accident as provided in section 39-08-09 or of being struck by any bullet shall report or cause a report to be made to a police officer within twenty-four hours after such motor vehicle is received, and before any repairs are made to such vehicle, giving the registration number, and the name and address of the owner, operator, or person in control of such vehicle with a description of the location and type of damage to the vehicle, or

any missing parts, if the vehicle does not have a sticker on a window thereof issued by a police officer, sheriff, or highway ~~patrolman~~patrol trooper, bearing information to show that the accident in which the vehicle was involved has been investigated. The police officer investigating any reportable accident shall attach a sticker to the window of any damaged vehicle showing that the accident in which such vehicle was involved has been investigated. If the vehicle does bear such a sticker, the garage or repair shop need not make the report this section requires and may begin repairs immediately. After repairs have been made and before the vehicle is released, the sticker provided herein must be removed.

**SECTION 21. AMENDMENT.** Section 39-07-13 of the North Dakota Century Code is amended and reenacted as follows:

**39-07-13. Wrecker and towing services to report.**

The person in charge or the operator of any commercial towing or wrecker service which causes any motor vehicle to be transported to a private residence or business other than a garage or repair shop which shows evidence of having been involved in a reportable accident as provided in section 39-08-09 or of being struck by any bullet shall report or cause a report to be made to a police officer within twenty-four hours after such motor vehicle is transported. The report must give the registration number, and the name and address of the owner, operator, or person in control of such vehicle with a description of the location and type of damage to the vehicle, or any missing parts, along with the location such vehicle was transported to, if the vehicle does not have a sticker on a window thereof issued by a police officer, sheriff, or highway ~~patrolman~~patrol trooper, bearing information to show that the accident in which the vehicle was involved has been investigated. If the vehicle does bear such a sticker, the towing or wrecker service need not make the report this section requires.

<sup>54</sup> **SECTION 22. AMENDMENT.** Paragraph 2 of subdivision a of subsection 1 of section 54-52-17.2 of the North Dakota Century Code is amended and reenacted as follows:

- (2) The highway ~~patrolmen's~~patrol troopers' retirement system.

**SECTION 23. AMENDMENT.** Subsection 2 of section 54-52.1-03 of the North Dakota Century Code is amended and reenacted as follows:

2. A retiree who has accepted a periodic distribution from the defined contribution retirement plan pursuant to section 54-52.6-13 who the board determines is eligible for participation in the uniform group insurance program or has accepted a retirement allowance from the public employees retirement system, the highway ~~patrolmen's~~patrol troopers' retirement system, the teachers' insurance and annuity association of America - college retirement equities fund for service credit earned while employed by North Dakota institutions of higher education, the retirement system established by job service North Dakota under section 52-11-01, the judges' retirement system established under chapter 27-17, or the teachers' fund for retirement may elect to participate in the uniform group under this chapter without meeting minimum requirements at age sixty-five, when the member's spouse reaches age sixty-five, upon the receipt of a benefit, or when the spouse terminates employment. If a retiree or surviving spouse does not elect to participate at the times specified in this subsection, the retiree or surviving spouse must meet

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<sup>54</sup> Section 54-52-17.2 was also amended by section 12 of House Bill No. 1040, chapter 514.

the minimum requirements established by the board. Subject to sections 54-52.1-03.2 and 54-52.1-03.3, each retiree or surviving spouse shall pay directly to the board the premiums in effect for the coverage then being provided. A retiree or surviving spouse who has met the initial eligibility requirements of this subsection to begin participation in the uniform group insurance program remains eligible as long as the retiree maintains the retiree's participation in the program by paying the required premium pursuant to rules adopted by the board.

**SECTION 24. AMENDMENT.** Subdivision b of subsection 1 of section 54-52.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:

- b. 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~~patrol troopers' 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.

<sup>55</sup> **SECTION 25. AMENDMENT.** Subdivision a of subsection 1 of section 54-52.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

- a. A member or surviving spouse of the highway ~~patrolmen's~~patrol troopers' retirement system is eligible for the credit beginning on the date retirement benefits are effective.

<sup>56</sup> **SECTION 26. 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 benefits coverage, medical benefits coverage, and prescription drug coverage under any health insurance program and toward dental, vision, and long-term care benefits coverage under any insurance program under subsection 1 in an amount equal to five dollars multiplied by the member's or deceased member's number of years of credited service under the highway ~~patrolmen's~~patrol troopers' 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 before attaining the age of sixty-five and an additional reduction factor of six percent applies for each year the member terminates employment before attaining the age of sixty-four. For a

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<sup>55</sup> Section 54-52.1-03.3 was also amended by section 26 of Senate Bill No. 2053, chapter 70.

<sup>56</sup> Section 54-52.1-03.3 was also amended by section 25 of Senate Bill No. 2053, chapter 70.

member of the highway patrolmen's patrol troopers' 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 before attaining the age of fifty-five and an additional reduction factor of six percent applies for each year the member terminates employment before 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 before attaining the age of sixty-five and an additional reduction factor of six percent applies for each year the member terminates employment before attaining the age of sixty-four.

Approved April 12, 2023

Filed April 13, 2023

# AGRICULTURE

## CHAPTER 71

### SENATE BILL NO. 2373

(Senators Erbele, Lemm, Luick)  
(Representatives Brandenburg, Hauck, Schreiber-Beck)

AN ACT to create and enact a new section to chapter 4.1-01 of the North Dakota Century Code, relating to the establishment of the livestock-friendly county designation.

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

**SECTION 1.** A new section to chapter 4.1-01 of the North Dakota Century Code is created and enacted as follows:

##### **Livestock-friendly county designation - Establishment by commissioner.**

1. The commissioner shall establish a livestock-friendly county designation to recognize and assist efforts to develop, maintain, or expand livestock sectors within the counties of this state.
2. A county may apply to the commissioner to become designated as a livestock-friendly county. A county is eligible for the designation under this section if the county:
  - a. Through its board of county commissioners, has adopted and enacted a resolution expressing interest in developing, maintaining, or expanding livestock production and processing sectors within the county;
  - b. Intends to collaborate with all appropriate political subdivisions within the county to develop, maintain, or expand livestock production and processing sectors;
  - c. Has submitted a plan detailing the necessary actions to develop, maintain, or expand livestock production and processing sectors;
  - d. Has conducted and completed a study identifying suitable locations for rural economic development, including locations for confined animal feeding operations, agricultural processing facilities, agricultural storage facilities, and other agricultural-related development; and
  - e. Has disclosed other existing or planned activities and initiatives within the county to develop, maintain, or expand livestock production and processing sectors.
3. If the commissioner determines a county has complied with the provisions in subsection 2, the commissioner shall publicly designate the county as a livestock-friendly county.

4. To retain the designation, a county shall submit an application to the commissioner every four years.
5. The commissioner may revoke a county's designation as a livestock-friendly county if the commissioner determines the county no longer meets the requirements for the designation under subsection 2.
6. The commissioner may adopt rules to effectuate the provisions of this section.

Approved March 22, 2023

Filed March 23, 2023

## CHAPTER 72

### SENATE BILL NO. 2194

(Senators Patten, Bekkedahl, Kannianen)  
(Representatives Longmuir, J. Olson, Timmons)

AN ACT to create and enact a new section to chapter 4.1-01 of the North Dakota Century Code, relating to a postproduction royalty oversight program; to amend and reenact subsection 2 of section 38-08-04.5 of the North Dakota Century Code, relating to the abandoned oil and gas well plugging and site reclamation fund; and to provide a report.

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

**SECTION 1.** A new section to chapter 4.1-01 of the North Dakota Century Code is created and enacted as follows:

##### **Postproduction royalty oversight program - Report.**

1. The commissioner shall establish a program providing technical assistance and support to mineral owners, lease owners, and mineral companies relating to royalty payment issues.
2. The commissioner may contract for ombudsmen to be a resource for technical assistance and followup on royalty payment issues.
3. The program may provide technical education, support, and outreach on royalty payment- related matters in coordination with other entities.
4. The commissioner may contract with local individuals, deemed trustworthy by the mineral owners, lease owners, and mineral companies, to be ombudsmen. The commissioner is not subject to the provisions of chapter 54-44.4 when contracting for the services of ombudsmen.
5. The names of mineral owners, lease owners, and mineral companies that receive assistance under the program are not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.
6. The commissioner shall submit expenses related to the implementation of the program to the industrial commission for reimbursement.
7. By June first of each even-numbered year, the commissioner shall provide a report to the energy development and transmission committee.

**SECTION 2. AMENDMENT.** Subsection 2 of section 38-08-04.5 of the North Dakota Century Code is amended and reenacted as follows:

2. Moneys in the fund may be used for the following purposes:
  - a. Contracting for the plugging of abandoned wells.

- b. Contracting for the reclamation of abandoned drilling and production sites, saltwater disposal pits, drilling fluid pits, and access roads.
- c. To pay mineral owners their royalty share in confiscated oil and to defray the expenses of the postproduction royalty oversight program provided under section 1 of this Act.
- d. Defraying costs incurred under section 38-08-04.4 in reclamation of saltwater handling facilities, treating plants, and oil and gas-related pipelines and associated facilities and to defray the expenses of the pipeline restoration and reclamation oversight program provided under chapter 4.1-01.
- e. Reclamation and restoration of land and water resources impacted by oil and gas development, including related pipelines and facilities that were abandoned or were left in an inadequate reclamation status before August 1, 1983, and for which there is not any continuing reclamation responsibility under state law. Land and water degraded by any willful act of the current or any former surface owner are not eligible for reclamation or restoration. The commission may expend up to five million dollars per biennium from the fund in the following priority:
  - (1) For the restoration of eligible land and water that are degraded by the adverse effects of oil and gas development including related pipelines and facilities.
  - (2) For the development of publicly owned land adversely affected by oil and gas development including related pipelines and facilities.
  - (3) For administrative expenses and cost in developing an abandoned site reclamation plan and the program.
  - (4) Demonstration projects for the development of reclamation and water quality control program methods and techniques for oil and gas development, including related pipelines and facilities.
- f. For transfer by the office of management and budget, upon request of the industrial commission, to the environmental quality restoration fund for use by the department of environmental quality for the purposes provided under chapter 23.1-10, if to address environmental emergencies relating to oil and natural gas development, including the disposal of oilfield waste and oil or natural gas production and transportation by rail, road, or pipeline. If a transfer requested by the industrial commission has been made under this subdivision, the department of environmental quality shall request the office of management and budget to transfer from subsequent deposits in the environmental quality restoration fund an amount sufficient to restore the amount transferred from the abandoned oil and gas well plugging and site reclamation fund.

Approved April 12, 2023

Filed April 13, 2023

## CHAPTER 73

### HOUSE BILL NO. 1423

(Representatives Thomas, Beltz, Fegley, Grueneich, Kempenich)  
(Senators Elkin, Kessel, Luick, Myrdal)

AN ACT to create and enact a new section to chapter 4.1-01 of the North Dakota Century Code, relating to a model zoning review task force; and to amend and reenact sections 11-33-02.1, 23.1-01-04, and 58-03-11.1 of the North Dakota Century Code, relating to a model zoning ordinance for animal feeding operations and the North Dakota insurance reserve fund.

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

**SECTION 1. AMENDMENT.** Section 11-33-02.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **11-33-02.1. Farming and ranching regulations - Requirements - Limitations - Definitions.**

1. For purposes of this section:
  - a. "Animal feeding operation" means a lot or facility, other than normal wintering operations for cattle and an aquatic animal production facility, where the following conditions are met:
    - (1) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for at least forty-five days in a twelve-month period; and
    - (2) Crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.
  - b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:
    - (1) The production of timber or forest products; or
    - (2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.
  - c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.
  - d. "Location" means the setback distance between a structure, fence, or other boundary enclosing an animal feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land

- zoned for residential, recreational, or commercial purposes. The term does not include the setback distance for the application of manure or for the application of other recycled agricultural material under a nutrient management plan approved by the department of environmental quality.
2. For purposes of this section, animal units are determined as as provided in subdivision c of subsection 7 of section 23.1-06-15.
  3. A board of county commissioners may not prohibit or prevent the use of land or buildings for farming or ranching and may not prohibit or prevent any of the normal incidents of farming or ranching.
  4. A board of county commissioners may not preclude the development of an animal feeding operation in the county.
  5. A board of county commissioners may not prohibit the reasonable diversification or expansion of a farming or ranching operation.
  6. A board of county commissioners may adopt regulations that establish different standards for the location of animal feeding operations based on the size of the operation and the species and type being fed.
  7. If a regulation would impose a substantial economic burden on an animal feeding operation in existence before the effective date of the regulation, the board of county commissioners shall declare that the regulation is ineffective with respect to any animal feeding operation in existence before the effective date of the regulation.
  8.
    - a. A board of county commissioners may establish high-density agricultural production districts in which setback distances for animal feeding operations and related agricultural operations are less than those in other districts.
    - b. A board of county commissioners may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for animal feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density agricultural production districts may not extend more than one and one-half miles [2.40 kilometers] from the edge of the area zoned for residential, recreational, or nonagricultural commercial uses.
    - c. ~~The setbacks provided for in this subsection may not exceed those established in subdivision a of subsection 7 of section 23.1-06-15 unless the county can demonstrate compelling, objective evidence specific to the county which requires a greater setback within the county, in which case the setbacks may exceed those established in subdivision a of subsection 7 of section 23.1-06-15 by no more than fifty percent. If a setback under this subsection is greater than the corresponding setback established in subdivision a of subsection 7 of section 23.1-06-15, a person whose animal feeding operation will be or has been affected by the applicable county ordinance may request the agriculture commissioner review the ordinance. After the review, the agriculture commissioner shall provide a summary of the review to the attorney general and request an~~

~~opinion from the attorney general regarding whether the ordinance and setback are lawful.~~

- ~~c. A board of county commissioners may not adopt or enforce setbacks applicable to animal feeding operations that exceed the setback distances provided in subsection 7 of section 23.1-06-15.~~
  - d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by an animal feeding operation.
9. A person intending to construct an animal feeding operation may petition the board of county commissioners for a determination whether the animal feeding operation would comply with zoning regulations adopted under this section and filed with the department of environmental quality under section 11-33-22 before the date the petition was received by the county. The petition must contain a description of the nature, scope, and location of the proposed animal feeding operation and a site map showing road access, the location of any structure, and the distance from each structure to the nearest section line. If the board of county commissioners does not validly object to the petition within sixty days of receipt, the animal feeding operation is deemed in compliance with the county zoning regulations. If the county allows animal feeding operations as a conditional use, the conditional use regulations must be limited to the board's authority under this section, and the approval process must comply with this section. The county shall make a decision ~~valid~~ determination on the application within sixty days of the receipt of a complete conditional use permit application. If the board of county commissioners determines the animal feeding operation would comply with zoning regulations or fails to object under this section, the county may not impose additional zoning regulations relating to the nature, scope, or location of the animal feeding operation later, provided an application is submitted promptly to the department of environmental equality, the department issues a final permit, and construction of the animal feeding operation commences within three years from the date the department issues its final permit and any permit appeals are exhausted. Any objection or determination that subsequently is reversed, set aside, or invalidated by a court of this state, is not a valid objection or decision for the purpose of calculating a procedural timeline under this section. A procedural timeline imposed by this section continues to be in effect during the pendency of any appeal of a county action or determination. A board of county commissioners may not:
- a. Regulate or impose zoning restrictions or requirements on animal feeding operations or other agricultural operations except as expressly permitted under this section; or
  - b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or requirements on animal feeding operations;
  - c. Charge fees or expenses of any kind totaling, in the aggregate, more than five hundred dollars in connection with any permit, petition, application, or other request relating to animal feeding operations; or
  - d. Require an existing animal feeding operation to have a permit for improvements or other modifications of an operation that is in current compliance with state and federal regulations or require an existing

operation to have a permit for improvements or other modifications that bring the operation into compliance with state or federal regulations, of the modifications or improvements do not cause the operation to exceed animal numbers of the setback requirement.

10. If a party challenges the validity of a county ordinance, determination, decision, or objection related to animal feeding operations, the court shall award the prevailing party actual attorney's fees, costs, and expenses.

**SECTION 2. AMENDMENT.** Section 23.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-01-04. Rulemaking authority - Limitations.**

1. Except as provided in subsection 2, the department of environmental quality may not adopt any rule for the purpose of the state administering a program under the federal Clean Air Act [42 U.S.C. 7401 et seq.]; federal Clean Water Act [33 U.S.C. 1251 et seq.]; federal Safe Drinking Water Act [42 U.S.C. 300 et seq.]; federal Resource Conservation and Recovery Act [42 U.S.C. 6901 et seq.]; federal Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601 et seq.]; federal Emergency Planning and Community Right to Know Act of 1986 [42 U.S.C. 11001 et seq.]; federal Toxic Substances Control Act [42 U.S.C. 2601 et seq.]; or federal Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]; which is more stringent than corresponding federal regulations that address the same circumstances. In adopting the rules, the department may incorporate by reference corresponding federal regulations.
2. The department may adopt rules more stringent than corresponding federal regulations or adopt rules where there are no corresponding federal regulations, for the purposes described in subsection 1, only if the department makes a written finding after public comment and hearing and based upon evidence in the record, that corresponding federal regulations are not adequate to protect the public health and the environment of the state. Those findings must be supported by an opinion of the department referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the department's conclusions.
3. If the department, upon petition by any person affected by a rule of the department, identifies rules more stringent than federal regulations or rules where there are no corresponding federal regulations, the department shall review and revise those rules to comply with this section within nine months of the filing of the petition.
4. Any person issued a notice of violation, or a denial of a permit or other approval, based upon a rule of the department which is more stringent than a corresponding federal regulation or where there is no corresponding federal regulation, may assert a partial defense to that notice, or a partial challenge to that denial, on the basis and to the extent the department's rule violates this section by imposing requirements more stringent than corresponding federal regulations, unless the more stringent rule of the department has been adopted in compliance with this section.

**SECTION 3. AMENDMENT.** Section 58-03-11.1 of the North Dakota Century Code is amended and reenacted as follows:

**58-03-11.1. Farming and ranching regulations - Requirements - Limitations - Definitions.**

1. For purposes of this section:
  - a. "Animal feeding operation" means a lot or facility, other than normal wintering operations for cattle and an aquatic animal production facility, where the following conditions are met:
    - (1) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period; and
    - (2) Crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.
  - b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:
    - (1) The production of timber or forest products; or
    - (2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.
  - c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.
  - d. "Location" means the setback distance between a structure, fence, or other boundary enclosing an animal feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned as a residential, recreational, or commercial zoning district. The term does not include the setback distance for the application of manure or for the application of other recycled agricultural material under a nutrient management plan approved by the department of environmental quality.
2. For purposes of this section, animal units are determined as provided under subdivision c of subsection 7 of section 23.1-06-15.
3. A board of township supervisors may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming or ranching.
4. A regulation may not preclude the development of an animal feeding operation in the township.
5. A board of township supervisors may not prohibit the reasonable diversification or expansion of a farming or ranching operation.
6. A board of township supervisors may adopt regulations that establish different standards for the location of animal feeding operations based on the size of the operation and the species and type being fed.

7. If a regulation would impose a substantial economic burden on an animal feeding operation in existence before the effective date of the regulation, the board of township supervisors shall declare that the regulation is ineffective with respect to any animal feeding operation in existence before the effective date of the regulation.
8.
  - a. A board of township supervisors may establish high-density agricultural production districts in which setback distances for animal feeding operations and related agricultural operations are less than those in other districts.
  - b. A board of township supervisors may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for animal feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density agricultural production districts may not extend more than one-half mile [0.80 kilometer] from the edge of the area zoned for residential, recreational, or nonagricultural commercial uses.
  - c. ~~The setbacks provided for in this subsection may not exceed those established in subdivision a of subsection 7 of section 23.1-06-15 unless the township can demonstrate compelling, objective evidence specific to the township which requires a greater setback within the township, in which case the setbacks may exceed those established in subdivision a of subsection 7 of section 23.1-06-15 by no more than fifty percent. If a setback under this subsection is greater than the corresponding setback established in subdivision a of subsection 7 of section 23.1-06-15, a person whose animal feeding operation will be or has been affected by the applicable township ordinance may request the agriculture commissioner review the ordinance. After the review, the agriculture commissioner shall provide a summary of the review to the attorney general and request an opinion from the attorney general regarding whether the ordinance and setback are lawful.~~
  - c. A board of township supervisors may not adopt or enforce setbacks applicable to animal feeding operations that exceed the setback distances provided in subsection 7 of section 23.1-06-15.
  - d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by an animal feeding operation.
9. A person intending to construct an animal feeding operation may petition the board of township supervisors for a determination whether the animal feeding operation would comply with zoning regulations adopted under this section and filed with the department of environmental quality under section 58-03-17 before the date the petition was received by the township. The petition must contain a description of the nature, scope, and location of the proposed animal feeding operation and a site map showing road access, the location of any structure, and the distance from each structure to the nearest section line. If the board of township supervisors does not validly object to the petition within sixty days of receipt, the animal feeding operation is deemed in compliance with the township zoning regulations. If the township allows animal feeding operations as a conditional use, the conditional use regulations must be

limited to the board's authority under this section, and the approval process must comply with this section. The township shall make a decision valid determination on the application within sixty days of the receipt of a complete conditional use permit application. If the board of township supervisors determines the animal feeding operation would comply with zoning regulations or fails to object under this section, the township may not impose additional zoning regulations relating to the nature, scope, or location of the animal feeding operation later, provided an application is submitted promptly to the department of environmental quality, the department issues a final permit, and construction of the animal feeding operation commences within three years from the date the department issues its final permit and any permit appeals are exhausted. Any objection or determination that subsequently is reversed, set aside, or invalidated by a court of this state, is not a valid objection or decision for the purpose of calculating a procedural timeline under this section. A procedural timeline imposed by this section continues to be in effect during the pendency of any appeal of a township action or determination. A board of township supervisors may not:

- a. Regulate or impose zoning restrictions or requirements on animal feeding operations or other agricultural operations except as expressly permitted under this section; or
  - b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or requirements on animal feeding operations;
  - c. Charge fees or expenses of any kind totaling, in the aggregate, more than five hundred dollars in connection with any permit, petition, application, or other request relating to animal feeding operations; or
  - d. Require an existing animal feeding operation to have a permit for improvements or other modifications of an operation that is in current compliance with state and federal regulations or require an existing operation to have a permit for improvements or other modifications that bring the operation into compliance with state or federal regulations, if the modifications or improvements do not cause the operation to exceed animal numbers of the setback requirement.
10. If a party challenges the validity of a township ordinance, determination, decision, or objection related to animal feeding operations, the court shall award the prevailing party actual attorney's fees, costs, and expenses.

**SECTION 4.** A new section to chapter 4.1-01 of the North Dakota Century Code is created and enacted as follows:

**Model zoning review task force - Report to the legislative management.**

1. Model zoning review task force consists of:
  - a. The agriculture commissioner or the commissioner's designee, as chair.
  - b. The director of the department of environmental quality or the director's designee.
  - c. The executive director of the North Dakota Indian affairs commission or the director's designee.

- d. Two members from the North Dakota township association. One member must be an agriculture producer.
  - e. Two members from the North Dakota association of counties. One member must be an agriculture producer.
  - f. One member of the milk producers association of North Dakota.
  - g. One member of the North Dakota stockmen's association.
  - h. One member of the North Dakota pork council.
  - i. One member of the North Dakota corn growers association.
  - j. One member of the North Dakota soybean growers association.
  - k. One member of the North Dakota farmers union.
  - l. One member of the North Dakota farm bureau.
  - m. One member of the North Dakota planning association.
2. The task force shall:
    - a. Develop a new, or update a previously created model zoning ordinance during the 2023-24 biennium.
    - b. Review low-density agriculture districts and applicable setbacks and uses.
    - c. Review current zoning districts for the purpose of considering the impact of overlay districts.
    - d. Provide a report to the legislative management on changes to the model zoning ordinance.
    - e. Meet every five years to review and update the model zoning ordinance, if necessary.
  3. The agriculture commissioner shall provide the task force with administrative services.
  4. For purposes of this section "model zoning ordinance" means the most current model zoning ordinance related to animal feeding operations in this state.

Approved April 6, 2023

Filed April 10, 2023

## CHAPTER 74

### SENATE BILL NO. 2027

(Legislative Management)  
(Agriculture and Natural Resources Committee)

AN ACT to repeal section 4.1-01-11 of the North Dakota Century Code, relating to the advisory committee on sustainable agriculture.

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

**SECTION 1. REPEAL.** Section 4.1-01-11 of the North Dakota Century Code is repealed.

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 75

### HOUSE BILL NO. 1276

(Representatives Satrom, Brandenburg, Grueneich, Hagert, Headland, Kempenich,  
Kiefert, Ostlie, Thomas)  
(Senators Conley, Luick, Wanzek)

AN ACT to create and enact a new section to chapter 4.1-01 of the North Dakota Century Code, relating to the agriculture infrastructure grant program; to amend and reenact section 4.1-01.1-07 of the North Dakota Century Code, relating to the agriculture diversification and development fund; to provide an appropriation for the agriculture diversification and development fund; and to provide for a transfer.

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

**SECTION 1.** A new section to chapter 4.1-01 of the North Dakota Century Code is created and enacted as follows:

##### **Agriculture infrastructure grant program.**

1. The agriculture commission, in consultation with the director of the department of transportation, shall develop policies to administer the agriculture infrastructure grant program to include a grant application process and eligibility criteria.
2. The agriculture commissioner, in consultation with the director of the department of transportation, shall award grants to political subdivisions for road and bridge improvements necessary to accommodate value-added agriculture businesses. Grant funding under this subsection may be used for:
  - a. Corridor improvements on county and township roadways; and
  - b. Improvements to roads or bridges that provide access to value-added agriculture businesses.
3. The agriculture commissioner shall award grants to entities for water and sewer line improvements and electrical and gas supply improvements necessary to accommodate value-added agriculture businesses.
4. Grants awarded under this section may not exceed:
  - a. The lesser of one million two hundred fifty thousand dollars per project or eighty percent of the infrastructure project cost for grants awarded under subsection 2.
  - b. The lesser of three hundred fifty thousand dollars per project or eighty percent of the capital improvement project costs for grants awarded under subsection 3.
5. For purposes of grant eligibility under this section, value-added agriculture businesses include the same businesses as provided under section 4.1-01.1-07.

6. Grant funding under this section may not be used for routine maintenance or operating costs.

<sup>57</sup> **SECTION 2. AMENDMENT.** Section 4.1-01.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-01.1-07. Agriculture diversification and development fund - Continuing appropriation.**

1. There is created in the state treasury the agriculture diversification and development fund. The fund consists of all moneys transferred to the fund by the legislative assembly, interest upon moneys in the fund, and payments of interest and principal on loans made from the fund. Moneys in the fund are appropriated to the Bank of North Dakota on a continuing basis for loan disbursements, ~~grants,~~ and administrative costs pursuant to this section. ~~No more than twenty-five percent of the fund may be utilized for grants in a biennium, and moneys in the fund are appropriated to the agriculture commissioner on a continuing basis for grants pursuant to this section and section 1 of this Act. The agriculture diversification and development committee shall designate the amount available from the fund for loans, interest rate buydowns, and grants.~~
2. Loans, interest rate buydowns, or grants under subsections 3 and 4 may be issued from the fund to support new or expanding value-added agriculture businesses that demonstrate financial feasibility, enhance profitability for farmers and ranchers, create jobs, and grow the state's economy. Grants under section 1 of this Act may be issued from the fund for infrastructure improvements necessary for the development or expansion of new or existing value-added agriculture businesses. Value-added agriculture businesses include food production or processing facilities; feed or pet food processing facilities; commodity processing facilities; agriculture product manufacturers; and animal agriculture production facilities, including swine, poultry, dairy, and feed lot production facilities.
3. The Bank of North Dakota shall develop policies for loans and interest rate buydowns from the fund in consultation with the agriculture diversification and development committee. The Bank shall review loan applications. To be eligible for a loan under this section, an entity shall agree to provide the Bank with information as requested. The Bank may develop policies for loan participation with local financial institutions. The Bank shall deposit in the fund all principal and interest paid on the outstanding loans. The Bank may use a portion of the interest paid as a servicing fee to pay for administrative costs, which may not exceed one-half of one percent of the amount of the outstanding loans. ~~The Bank shall contract with a certified public accounting firm to audit the fund if the fund has any loans. The fund must be audited annually pursuant to section 6-09-29, and the cost of the audit must be paid from the fund.~~
4. The agricultural diversification and development committee shall develop policies for grants from the fund to support new or expanding value-added agriculture businesses, including eligibility criteria, maximum grant amounts, and reporting requirements. Based on recommendations from the agricultural

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<sup>57</sup> Section 4.1-01.1-07 was also amended by section 1 of Senate Bill No. 2233, chapter 95.

diversification and development committee, the agriculture commissioner shall distribute the grant funding.

**SECTION 3. APPROPRIATION - TRANSFER TO AGRICULTURE DIVERSIFICATION AND DEVELOPMENT FUND.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$25,000,000, which the office of management and budget shall transfer to the agriculture diversification and development fund, during the biennium beginning July 1, 2023, and ending June 30, 2025. Of the \$25,000,000, up to \$10,000,000 is available for agriculture infrastructure grants to political subdivisions.

Approved April 20, 2023

Filed April 21, 2023

## CHAPTER 76

### HOUSE BILL NO. 1437

(Representatives Beltz, Brandenburg, Hagert, Kempenich, Mitskog, Satrom, Thomas)  
(Senators Klein, Luick, Wanzek)

AN ACT to create and enact a new section to chapter 4.1-01 of the North Dakota Century Code, relating to the creation of regional livestock planning grants; and to provide for an appropriation.

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

**SECTION 1.** A new section to chapter 4.1-01 of the North Dakota Century Code is created and enacted as follows:

#### **Regional livestock development and planning program - Grants.**

1. The commissioner shall administer a grant program to assist counties and regional planning councils, as defined in chapter 54-40.1, for livestock development planning. A county or a regional planning council may submit an application for assistance under this section to the commissioner.
2. The commissioner shall award grants to counties and regional planning councils for purposes of coordinating strategic planning and accommodating and encouraging investment in livestock production. Grants shall be awarded for the following activities:
  - a. Identification of suitable locations for rural economic development, including animal feeding operations, agricultural processing and storage facilities, and other agricultural-related development. The following factors must be considered when identifying suitable locations for rural economic development:
    - (1) Local zoning and land use regulations;
    - (2) State permitting requirements; and
    - (3) Availability of infrastructure and natural resources necessary to accommodate rural economic development projects.
  - b. Review and updating of township zoning and land use regulations.
3. Grants awarded under this section may not exceed:
  - a. Up to twelve thousand dollars for every county included in an application for activities described in subdivision a of subsection 2.
  - b. Up to five hundred dollars for every township included in an application for activities described in subdivision b of subsection 2.
4. Any information created, collected, or maintained by the commissioner which identifies individual parcels of land for rural economic development is

confidential and not subject to the open records requirements of section 44-04-18.

**SECTION 2. APPROPRIATION - ENVIRONMENT AND RANGELAND PROTECTION FUND - AGRICULTURE COMMISSIONER - REGIONAL LIVESTOCK DEVELOPMENT AND PLANNING GRANT PROGRAM.** There is appropriated out of any moneys in the environment and rangeland protection 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 agriculture commissioner for the purpose of identifying locations for rural economic development, including animal feeding operations, agricultural processing and storage facilities, and other agricultural-related development, and assisting the review and updating of township zoning and land use regulations, for the biennium beginning July 1, 2023, and ending June 30, 2025.

Approved April 18, 2023

Filed April 19, 2023

## CHAPTER 77

### HOUSE BILL NO. 1153

(Representatives Brandenburg, Grueneich, Headland, D. Johnson, Kempenich,  
Mitskog, Nelson, Weisz)  
(Senators Erbele, Klein, Wanzek, Weber)

AN ACT to amend and reenact sections 4.1-04-08 and 4.1-04-09 of the North Dakota Century Code, relating to the duties and powers of the corn council; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 4.1-04-08 of the North Dakota Century Code is amended and reenacted as follows:

##### **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. Establish a grant program and guidelines to provide funding to corn-related programs and organizations that benefit North Dakota corn producers, consistent with this chapter;
6. Sue and be sued; and
- ~~6-7.~~ Do all things necessary and proper to enforce and administer this chapter.

**SECTION 2. AMENDMENT.** Section 4.1-04-09 of the North Dakota Century Code is amended and reenacted as follows:

##### **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, corn policy development, promotion, 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.

3. The council shall hold two public input meetings per year with organizations dedicated to serving North Dakota corn producers to discuss recommendations for the use of moneys received under this chapter.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 20, 2023

Filed April 21, 2023

## CHAPTER 78

### HOUSE BILL NO. 1255

(Representatives Holle, K. Anderson, Christensen, Dyk, Fisher, Hauck, Murphy, S. Olson, Rohr, VanWinkle)  
(Senators Boehm, Schaible)

AN ACT to amend and reenact sections 4.1-05-01 and 4.1-25-01, and subsection 9 of section 4.1-26-01 of the North Dakota Century Code, relating to the definition of milk.

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

**SECTION 1. AMENDMENT.** Section 4.1-05-01 of the North Dakota Century Code is amended and reenacted 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 ewes a healthy four-legged hooved mammal. 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. "Milk" means the lacteal secretion, practically free of colostrum, obtained by the complete milking of a healthy hooved mammal, including any member of the order Cetartiodactyla and including a member of the family:
  - a. Bovidae, including cattle, water buffalo, sheep, goats, and yaks;
  - b. Cervidae, including deer, reindeer, and moose;
  - c. Equidae, including horses and donkeys; and
  - d. Camelidae, including llamas, alpacas, and camels.
6. "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.

- ~~6-7.~~ "Producer" means a person engaged in the production of milk from ~~ewsa~~ four-legged mammal for commercial use.

**SECTION 2. AMENDMENT.** Section 4.1-25-01 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-25-01. Definitions.**

1. "Cheese factory" means a facility that makes cheese for commercial purposes.
2. "Commissioner" means the agriculture commissioner or the commissioner's designee.
3. "Condensery" means a facility where condensed or evaporated milk is produced.
4. "Dairy animal" means any healthy four-legged hooved mammal maintained for the commercial production of milk to be offered for sale for use in the processing or manufacturing of milk or dairy products.
5. "Dairy farm" means a place where one or more dairy animals are kept.
6. "Dairy product" includes milk, cream, sour cream, butter cream, butter, skimmed milk, ice cream, whipped cream, flavored milk or skim milk drink, dried or powdered milk, cheese, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk.
7. "Department" means the department of agriculture.
8. "Distributor" means a person that provides storage, transportation, delivery, or distribution of dairy products to any person who sells dairy products.
9. "Drying plant" means a facility that manufactures dry milk products by removing water from milk or milk products.
10. "Filled dairy products" means any milk, cream, or skimmed milk, or any combination of them, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured from those products, to which has been added, blended, or compounded with, any fat or oil, other than milk fat, to imitate a dairy product. "Filled dairy products" may not be construed to mean or include:
  - a. Any distinctive proprietary food compound not readily mistaken for a dairy product, if the compound is customarily used on the order of a physician and is prepared and designed for medicinal or special dietary use and prominently so labeled;
  - b. Any dairy product flavored with chocolate or cocoa or the vitamin content of which has been increased, or both, if the fats or oils other than milk fat contained in the product do not exceed the amount of cacao fat naturally present in the chocolate or cocoa used and the food oil, not in excess of one-hundredth per centum of the weight of the finished product, used as a carrier of such vitamins; or

## c. Margarine.

11. "Grading" means the examination of milk or milk products by sight, odor, taste, or laboratory analysis, the results of which determine a rating of the quality of the product.
12. "Ice cream plant" means a facility that makes ice cream for commercial purposes.
13. "Ice milk plant" means a facility that makes ice milk for commercial purposes.
14. "Imitation milk" or "imitation milk product" means a food product or food compound made to resemble milk or a milk product when any of the following occurs:
  - a. The food physically resembles milk or a milk product. "Physical resemblance" means those characteristics relating to the composition of food, including fat and moisture content, nonfat solids content, and functional ingredient or food additive content such as emulsifiers, stabilizers, flavor, or color additives.
  - b. The packaging used resembles the packaging used for milk or for a milk product.
  - c. The food product or food compound is displayed in a retail establishment in the same manner as milk or a milk product.
  - d. Verbal or pictorial expressions are used on the food products or food compounds, labeling, or in advertisements or other similar devices used to promote the food products or food compounds that state or imply that the food is milk or a milk product.
  - e. The food product or food compound in any other way is manufactured, packaged, or labeled so as to resemble the identity, intended use, or physical and sensory properties of milk or a milk product. "Physical and sensory properties" means those characteristics relating to flavor, texture, smell, and appearance of a food product or food compound.
15. "Milk" means the lacteal secretion, practically free of colostrum, obtained by the complete milking of a healthy hooved mammal, including any member of the order Cetartiodactyla and including a member of the family:
  - a. Bovidae, including cattle, water buffalo, sheep, goats, and yaks;
  - b. Cervidae, including deer, reindeer, and moose;
  - c. Equidae, including horses and donkeys; and
  - d. Camelidae, including llamas, alpacas, and camels.
16. "Milk hauler" means a person that owns vehicles used to transport raw milk from a dairy farm to a dairy facility.
- 46-17. "Milk plant or bottling plant" means a facility where milk or milk products are collected, handled, processed, stored, and prepared for distribution.

- 17-18. "Milk solids or total solids" means the total amount of solids in milk.
- 18-19. a. "Pasteurization" as applied to milk or skim milk means either:
- (1) The process of heating every particle of milk to at least one hundred forty-five degrees Fahrenheit [62.78 degrees Celsius] and cream and other milk products to at least one hundred fifty degrees Fahrenheit [65.55 degrees Celsius], and holding it at that temperature continuously for at least thirty minutes; or
  - (2) Heating every particle of milk to at least one hundred sixty-one degrees Fahrenheit [71.67 degrees Celsius] and cream and other milk products to at least one hundred sixty-six degrees Fahrenheit [74.44 degrees Celsius], and holding it at that temperature continuously for at least fifteen seconds in approved and properly operated equipment.
- b. When applied to cream for butter making, "pasteurization" means the cream must be held at a temperature of not less than one hundred sixty-five degrees Fahrenheit [73.89 degrees Celsius] for at least thirty minutes or not less than one hundred eighty-five degrees Fahrenheit [85.00 degrees Celsius] for at least fifteen seconds.
- c. This subsection may not be construed as barring any other process that has been demonstrated to be equally efficient which assures proper pasteurization and keeping quality, which is consistent with the most desirable quality, and which is approved by the commissioner.
- 19-20. "Pasteurized milk ordinance" means the 2019 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.
- 20-21. "Peddler" means a person that purchases milk or milk products and sells the milk or milk products directly to consumers at any place other than from a store, stand, or other fixed place of business.
- 21-22. "Person" means individuals, firms, partnerships, associations, trusts, estates, corporations, and limited liability companies, and any and all other business units, devices, or arrangements.
- 22-23. "Processing or manufacturing" means the treatment of milk or milk products by pasteurizing, bottling, churning, adding flavors to, freezing, dehydrating, packaging, coagulating, or treating in any manner that changes the natural, physical, or chemical properties of the original product.
- 23-24. "Producer dairy" means a dairy farm that sells milk or cream to a dairy plant for processing or manufacturing.
- 24-25. "Producer-processor" or "producer-distributor" means a producer that is also a processor or distributor.
- 25-26. "Raw milk or raw milk products" means products that have not been treated by the process of pasteurization.
- 26-27. "Retail" means the sale of milk or milk products directly to the consumer.

- 27-28. "Sampler" means a person, other than a milk producer or dairy plant employee, who transports samples for official use of raw milk or milk products from a dairy farm to a dairy facility.
- 28-29. "Sampling" means a procedure taking a portion of milk or milk products for grading or testing.
- 29-30. "Shared animal ownership agreement" means any contractual arrangement under which an individual:
- a. Acquires an ownership interest in a milk-producing animal;
  - b. Agrees to pay another for, reimburse another for, or otherwise accept financial responsibility for the care and boarding of the milk-producing animal at the dairy farm; and
  - c. Is entitled to receive a proportionate share of the animal's raw milk production as a condition of the contractual arrangement.
- 30-31. "Skim milk solids or solids-not-fat" means the total solids in milk after all fat has been removed.
- 31-32. "Standard Methods" means the seventeenth edition of the Standard Methods for the Examination of Dairy Products published by the American public health association.
- 32-33. "Testing" means an examination of milk or milk products by sight, odor, taste, or laboratory analysis to determine the quality, wholesomeness, or composition of the product.
- 33-34. "Wholesale" means the sale of milk or milk products to a retail dealer for resale.

**SECTION 3. AMENDMENT.** Subsection 9 of section 4.1-26-01 of the North Dakota Century Code is amended and reenacted as follows:

9. "Milk" means the lacteal secretion of a cow, including when the secretion is raw, cooled, pasteurized, standardized, homogenized, recombined, or concentrated, provided the secretion meets applicable grade A requirements, practically free of colostrum, obtained by the complete milking of a healthy hooved mammal, including any member of the order Cetartiodactyla and including a member of the family:
- a. Bovidae, including cattle, water buffalo, sheep, goats, and yaks;
  - b. Cervidae, including deer, reindeer, and moose;
  - c. Equidae, including horses and donkeys; and
  - d. Camelidae, including llamas, alpacas, and camels.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 79

### HOUSE BILL NO. 1501

(Representative Beltz)

AN ACT to amend and reenact subsection 1 of section 4.1-11-01, sections 4.1-11-08, 4.1-11-10, 4.1-11-11, 4.1-11-12, 4.1-11-13, 4.1-11-14, and 4.1-11-15, and subsection 1 of section 4.1-44-03 of the North Dakota Century Code, relating to the North Dakota soybean council and the North Dakota soybean fund; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 4.1-11-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Council" means the nongovernmental entity, known as the North Dakota soybean council.

**SECTION 2. AMENDMENT.** Section 4.1-11-08 of the North Dakota Century Code is amended and reenacted as follows:

#### **4.1-11-08. 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 3. AMENDMENT.** Section 4.1-11-10 of the North Dakota Century Code is amended and reenacted as follows:

#### **4.1-11-10. Council duties and reports.**

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. Annually, the council shall prepare and submit a report summarizing the activities of the council to the state auditor and commissioner. The report must show all income, expenses, and other relevant information concerning fees collected and expended.

5. The council shall request and submit a certificate of good standing, issued by the secretary of state, as part of the report described in subsection 4.

**SECTION 4. AMENDMENT.** Section 4.1-11-11 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-11-11. Assessment.**

Any federal assessment under the Soybean Promotion, Research, and Consumer Information Act [Pub. L. 101-624; 104 Stat. 3881; 7 U.S.C. 92 et seq.] or a similar act remains in place, a state assessment under this section is prohibited. If the Soybean Promotion, Research, and Consumer Information Act [Pub. L. 101-624; 104 Stat. 3881; 7 U.S.C. 92 et seq.] or similar act eliminates a federal assessment, the council shall implement a state assessment equaling one-half of one percent of the value of the sale must be imposed upon all soybeans sold to a designated handler.

**SECTION 5. AMENDMENT.** Section 4.1-11-12 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-11-12. Collection of assessment by designated handler - Records.**

4. If an assessment is in place under section 4.1-11-11:
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-; and
  3. All records required by this section may be examined by the council upon request.

**SECTION 6. AMENDMENT.** Section 4.1-11-13 of the North Dakota Century Code is amended and reenacted as follows:

**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 under section 4.1-11-11.

**SECTION 7. AMENDMENT.** Section 4.1-11-14 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-11-14. Submission of assessments - ~~Civil~~ penalty Delinquent assessment.**

Each designated handler shall forward to the council all assessments collected by the handler under section 4.1-11-11 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.

**SECTION 8. AMENDMENT.** Section 4.1-11-15 of the North Dakota Century Code is amended and reenacted as follows:

#### **4.1-11-15. Continuing appropriation - Use of council funds.**

~~The council shall forward all~~All moneys received under this chapter to the state treasurer for deposit~~must be deposited~~ in the soybean fund~~checkoff account~~ at the Bank of North Dakota. All moneys in the soybean fund~~checkoff account~~ are appropriated on a continuing basis to the council ~~and may~~ be used exclusively to carry out~~by the council for the payment of claims by the council based on the obligations incurred in the performance of council activities, functions, and purposes as provided in this chapter. The board shall segregate moneys in the soybean checkoff account from all other moneys of the council.~~

**SECTION 9. AMENDMENT.** Subsection 1 of section 4.1-44-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding any other provision of law, the state treasurer shall invest in accordance with section 21-10-07 all available moneys in:
  - a. The potato fund;
  - b. The oilseed fund;
  - c. The dry bean fund;
  - d. The dry pea and lentil fund;
  - e. The barley fund;
  - f. ~~The soybean fund;~~
  - g. The corn fund;
  - h-g. The honey fund;
  - i-h. The turkey fund;
  - j-i. The milk marketing fund;
  - k-j. The dairy promotion commission fund;
  - l-k. The state wheat commission fund;
  - m-l. The ethanol fund; and
  - n-m. The North Dakota beef commission fund.

**SECTION 10. EFFECTIVE DATE.** This Act becomes effective on July 1, 2024.

Approved April 29, 2023

Filed May 1, 2023

## CHAPTER 80

### SENATE BILL NO. 2096

(Agriculture and Veterans Affairs Committee)  
(At the request of the Agriculture Commissioner)

AN ACT to create and enact section 4.1-18.1-01.1 and nine new sections to chapter 4.1-18.1 of the North Dakota Century Code, relating to administrative rules, hemp commodities or products, powers of the commissioner, and civil enforcement remedies; to amend and reenact sections 4.1-18.1-01 and 4.1-18.1-04.3, section 4.1-59-09 of the North Dakota Century Code, as created by section 2 of House Bill No. 1393, as approved by the sixty-eighth legislative assembly, and subparagraph a of paragraph 2 of subdivision m of subsection 5 of section 19-03.1-05 of the North Dakota Century Code, relating to definitions, prohibited acts by licensees, schedule I controlled substances tetrahydrocannabinols, and bonding requirements for grain buyers; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 4.1-18.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **4.1-18.1-01. Definitions.**

1. "Broad spectrum" means hemp extract or hemp commodity or product containing naturally occurring hemp-derived cannabinoids, terpenes, and other naturally occurring compounds, but where tetrahydrocannabinol has been removed to nondetectable levels using a fit-for-purpose method, with a total tetrahydrocannabinol level not to exceed an amount determined by the commissioner.
2. "Chemically derived cannabinoid" means a chemical substance created by a chemical reaction that changes the molecular structure of any chemical substance derived from the plant cannabis. The term does not include cannabinoids produced by decarboxylation from a naturally occurring cannabinoid acid without the use of a chemical catalyst.
3. "Full spectrum" means hemp extract or hemp commodity or product containing naturally occurring hemp-derived cannabinoids, terpenes, and other naturally occurring compounds, processed without intentional complete removal of any compound and without the addition of isolated cannabinoids, with a total tetrahydrocannabinol level not to exceed an amount determined by the commissioner.
4. "Hemp" means the plant cannabis sativa L. and any part of the plant, including the seeds and all derivatives, ~~extracts, cannabinoids, isomers, acids, salts, and salts of isomers~~ flowers, whether growing or not, with a total tetrahydrocannabinol concentration in an amount determined by the commissioner. The term does not include ~~any hemp extract, commodity or product using hemp which exceeds the allowable amount of total tetrahydrocannabinol determined by the commissioner, or a hemp substance or product prohibited by this chapter.~~

2-5. "Hemp commodity or product" means a product made from hemp or hemp extract, including cloth, cordage, fiber, food, fuel, paint, paper, particleboard, plastics, seeds, seed meal, and seed oil for consumption, a hemp tincture, and a hemp topical.

a. The term includes:

- (1) Hemp processed through retting or other processing such that it is a suitable fiber for textiles, rope, paper, hempcrete, or other building or fiber materials;
- (2) Hemp seed processed such that it is incapable of germination and processed such that is suitable for human consumption;
- (3) Hemp seed pressed or otherwise processed into oil;
- (4) Cannabidiol, also known as CBD, products and cannabigerol, also known as CBG, including broad spectrum, full spectrum, and isolate products, with a total tetrahydrocannabinol level not to exceed an amount determined by the commissioner; and
- (5) A hemp commodity or product approved in writing by the agriculture commissioner.

b. The term does not include:

- (1) Hemp that has been chopped, separated, or dried for purposes of transfer or storage;
  - (2) A chemical compound extracted from hemp used to formulate, process, or otherwise make an inhalant;
  - (3) A product containing delta-8 tetrahydrocannabinol, also known as delta-8 THC;
  - (4) A product containing chemically derived cannabinoids. Including:
    - (a) Tetrahydrocannabinol acetate, also known as THC-O-Acetate and THC-O;
    - (b) Hexahydrocannabinol, also known as HHC; and
    - (c) Tetrahydrocannabiphorol, also known as THCP; or
  - (5) A psychotropic hemp commodity or product disapproved in writing by the commissioner.
4. "Hemp extract" means a concentrate or extract obtained by separating cannabinoids from hemp by a mechanical, chemical, or other process. The term does not include hemp seed pressed or otherwise processed into oil.
5. "Hemp tincture" means a solution that may not exceed thirty milliliters consisting of:

- a. At least twenty-five percent of non-denatured alcohol, in addition to a hemp extract, and other ingredients intended for human consumption or ingestion; or
  - b. Glycerin or plant-based oil and hemp extract, and is intended for human consumption or ingestion.
6. "Hemp topical" means a hemp commodity or product intended to be applied to the skin or hair. The maximum concentration or amount of total tetrahydrocannabinol permitted in a hemp topical is fifty milligrams per container.
  7. "Isolate" means hemp extract or hemp commodity or product comprised of a single cannabinoid compound.
  8. "Tetrahydrocannabinol" means delta-9 tetrahydrocannabinol and any structural, optical, or geometric isomers of tetrahydrocannabinol, including:
    - a. Delta-7 tetrahydrocannabinol;
    - b. Delta-8 tetrahydrocannabinol; ~~and~~
    - c. Delta-10 tetrahydrocannabinol.
  - 3-9. "Total tetrahydrocannabinol" means the sum of the percentage, by weight, of tetrahydrocannabinolic acid multiplied by eight hundred seventy-seven thousandths plus the percentage of weight of tetrahydrocannabinol.

**SECTION 2.** Section 4.1-18.1-01.1 of the North Dakota Century Code is created and enacted as follows:

**4.1-18.1-01.1. Administrative rules.**

The commissioner may adopt and amend rules consistent with this chapter governing the sale, distribution, testing, labeling, and regulation of hemp and hemp commodities or products, and substances and products prohibited by this chapter.

**SECTION 3. AMENDMENT.** Section 4.1-18.1-04.3 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-18.1-04.3. Prohibited acts - Licensee.**

A licensee may not:

1. ~~Engage in the isomerization of cannabinoids to create isomers of tetrahydrocannabinol, including delta-8, delta-9, and delta-10 tetrahydrocannabinol.~~Chemically modify or convert a hemp extract, or engage in any process that converts cannabidiol into delta-9, delta-8, delta-10-tetrahydrocannabinol, or other tetrahydrocannabinol isomers, analogs, or derivatives; and
2. Sell or distribute hemp or hemp commodities or products that contain chemically derived cannabinoids or were created using the isomerization of cannabinoids to create isomers of tetrahydrocannabinol, including delta-8, delta-9, and delta-10 tetrahydrocannabinol by chemically modifying or converting a hemp extract.

**SECTION 4.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is created and enacted as follows:

**Hemp commodities or products - Allowable products - Retailers.**

1. A person may only sell hemp and hemp commodities or products allowed under this chapter. All hemp and hemp commodities or products must undergo testing and report in a certificate of analysis and in the product label the testing results of the total tetrahydrocannabinol concentration amount. The certificate of analysis must be made available to the commissioner upon request.
2. A person may not sell hemp, or hemp commodities or products that contain chemically derived cannabinoids or delta-8 tetrahydrocannabinol.
3. All other cannabis- or hemp-derived products that are not allowable hemp commodities or products under this chapter must be regulated in accordance with chapter 19-24.1.
4. All hemp commodities or products sold pursuant to this section must comply with all product labeling rules as mandated by the Food, Drug, and Cosmetic Act [21 U.S.C. 9 et seq.] and related administrative rules, both the Act and rules incorporated by reference.
5. Under the Food, Drug, and Cosmetic Act [21 U.S.C. 9 et seq.], incorporated by reference, non-food and drug administration approved hemp-derived products may not be sold as dietary supplements, food or beverage products, or marketed with medical claims.

**SECTION 5.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is created and enacted as follows:

**Powers of commissioner.**

If the commissioner reasonably suspects a person is about to engage in, has engaged in, or is engaging in, a violation of this chapter, the commissioner may:

1. Require the person to file, on forms the commissioner prescribes, a statement or report in writing, under oath or otherwise, of all the facts and circumstances concerning the creation, sale, distribution, or advertisement of the hemp commodity or product by the person, as well as other data;
2. Examine under oath the person in connection with the creation, sale, distribution, or advertisement of any hemp commodity or product;
3. Examine any merchandise or sample, record, book, document, account, or paper concerning the creation, sale, distribution, or advertisement of hemp commodity or product by the person; and
4. Pursuant to an order of a district court, seize and retain any merchandise or sample, record, book, document, account, paper, or other evidence as authorized by the order.

**SECTION 6.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is created and enacted as follows:

### **Subpoena - Hearing.**

To regulate compliance with this chapter, the commissioner, in addition to other powers conferred upon the commissioner by this chapter, may issue subpoenas to any person, administer an oath or affirmation to any person, and conduct hearings in aid of any investigation or inquiry.

**SECTION 7.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is created and enacted as follows:

#### **Failure to supply information or obey subpoena.**

If a person fails or refuses to file any statement or report requested by the commissioner, or obey any subpoena issued by the commissioner, the commissioner may, after notice, apply to a district court and request an order:

1. Granting injunctive relief, restraining the creation, sale, distribution, or advertisement of any hemp commodity or product merchandise by a person;
2. Vacating, annulling, or suspending the charter of a for-profit or nonprofit corporation or limited liability company created by or under the laws of this state or revoking or suspending the certificate of authority to do business in this state of a foreign corporation or limited liability company or revoking or suspending any other licenses, permits, or certificates issued pursuant to law to a person which are used to violate this chapter; and
3. Granting such other relief as may be required.

**SECTION 8.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is created and enacted as follows:

#### **Assurance of voluntary compliance.**

The commissioner may accept an assurance of voluntary compliance for an act or practice the commissioner determines may be in violation of this chapter, from any person the commissioner alleges is about to engage in, engaging in, or has engaged in the violation. The assurance of voluntary compliance must be in writing and must be filed with and is subject to the approval of the district court of the county in which the alleged violator resides or has as a principal place of business, conducts business, or in Burleigh County.

**SECTION 9.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is created and enacted as follows:

#### **Remedies - Injunction - Other relief - Receiver - Cease and desist orders - Civil penalties - Costs recoverable in adjudicative proceedings.**

1. If the commissioner reasonably suspects a person is about to engage in, has engaged in, or is engaging in a practice in violation of this chapter, the commissioner may seek and obtain in an action in a district court an injunction enjoining the person from engaging in the violation, continuing the violation, or doing any act in furtherance of the violation after proper notice to the person. The notice must state generally the relief sought and be served at least ten days before the hearing of the action.
2. If the commissioner reasonably suspects a person is about to engage in, has engaged in, or is engaging in a violation of this chapter, and the person is

about to conceal assets that may have been acquired in violating this chapter, conceal oneself, or leave the state, the commissioner may apply to the district court, ex parte, for an order appointing a receiver of the assets of the person.

3. Upon a showing made by affidavit or other evidence that shows reasonable grounds the person is about to engage in, has engaged in, or is engaging in a violation of this chapter and the person is about to conceal assets that may have been acquired in violating this chapter, conceal oneself, or leave the state, the court shall order the appointment of a receiver to receive the assets of the person. From the received assets, the court may make an order or judgment necessary to restore to another person who has suffered damages due to another person violating this chapter any money or property.
4. If the commissioner reasonably suspects a person is about to engage in, has engaged in, or is engaging in a violation of this chapter, or by an order of the commissioner issued under this chapter, the commissioner, without notice and hearing, may issue a cease and desist order.
  - a. In addition to any other remedy authorized by this chapter, the commissioner may impose by order and collect a civil penalty against a person found in an adjudicative proceeding to have violated a cease and desist order issued pursuant to this section, in an amount not more than five thousand dollars for each violation.
  - b. The person may request a hearing before the commissioner if a written request is made within ten days after the receipt of the order. Unless otherwise specifically provided, an adjudicative proceeding under this section must be conducted in accordance with chapter 28-32.
  - c. If the commissioner prevails in an adjudicative proceeding pursuant to this section, the commissioner may assess the nonprevailing person for all adjudicative proceeding and hearing costs, including reasonable attorney's fees, investigation expenses, costs, and other expenses of the investigation and action.

**SECTION 10.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is created and enacted as follows:

**Powers of receiver.**

1. When a receiver is appointed by the court pursuant to this chapter, the receiver may sue for, collect, receive, or take into possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description, derived by means of a violation of this chapter, including property with which the property has been commingled if it cannot be identified in kind because of the commingling, and sell, convey, and assign the property and hold and dispose of the proceeds under the direction of the court.
2. A person who has suffered damages due to another person violating this chapter and submits proof to the satisfaction of the court that the person has in fact been damaged may participate with general creditors in the distribution of the assets to the extent the person has sustained losses. The court has jurisdiction of all questions arising in these proceedings and may make orders and judgments as necessary.

**SECTION 11.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is created and enacted as follows:

**Costs recoverable.**

If the commissioner prevails in an action brought to district court under this chapter, the court shall award the commissioner reasonable attorney's fees, investigation expenses, costs, and other expenses associated with the action. All attorney's fees, investigation expenses, costs, and other expenses received by the commissioner under this section must be deposited into the attorney general's general operating fund.

**SECTION 12.** A new section to chapter 4.1-18.1 of the North Dakota Century Code is created and enacted as follows:

**Civil penalties.**

The court may assess for the benefit of the state a civil penalty of not more than five thousand dollars for each violation of this chapter. The penalty provided in this section is in addition to those remedies otherwise provided by this chapter. The penalty must be awarded to the commissioner and deposited into the commissioner's general operating fund for use in regulating compliance with this chapter.

<sup>58</sup> **SECTION 13. AMENDMENT.** Section 4.1-59-09 of the North Dakota Century Code, as created by section 2 of House Bill No. 1393, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

**4.1-59-09. Bond filed by grain buyer.**

1. Before a license is effective for a grain buyer under this chapter, the applicant for the license shall file a bond with the commissioner which must:
  - a. Be in a sum not less than one hundred thousand dollars.
  - b. Be continuous, unless the corporate surety by certified mail notifies the licensee and the commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.
  - c. Run to this state for the benefit of all persons selling grain to or through the grain buyer.
  - d. Be conditioned:
    - (1) For the faithful performance of the licensee's duties as a grain buyer.
    - (2) For compliance with the provisions of law and the rules of the commissioner relating to the purchase of grain by the commissioner monthly.
  - e. Be for the specific purpose of:
    - (1) Protecting the sellers of grain.
    - (2) Covering the costs incurred by the commissioner in the administration of the licensee's insolvency.

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<sup>58</sup> Section 4.1-59-09 was created by section 2 of House Bill No. 1393, chapter 89.

- f. Not accrue to the benefit of any person entering a credit-sale contract with a grain buyer.
2. The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which the bond is in force but, for losses during any annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.
3. The commissioner shall set the amount of the bond and may require an increase in the amount of a bond as the commissioner deems necessary to accomplish the purposes of this section.
4. The amount of the bond for a grain buyer must be based on the dollar value of the grain purchased, solicited, or merchandised.
5. A grain buyer shall report purchases, solicitations, and merchandising agreements to the commissioner monthly.
6. The surety on the bond must be a corporate surety company, approved by the commissioner and authorized to do business within the state. The commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in the commissioner's judgment, cash, a negotiable instrument, or a personal surety bond properly will protect the holders of outstanding receipts.

<sup>59</sup> **SECTION 14. AMENDMENT.** Subparagraph a of paragraph 2 of subdivision m of subsection 5 of section 19-03.1-05 of the North Dakota Century Code is amended and reenacted as follows:

- (a) The allowable amount of total tetrahydrocannabinol found in hemp or an allowed hemp commodity or product as defined in chapter 4.1-18.1; or

Approved April 21, 2023

Filed April 24, 2023

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<sup>59</sup> Section 19-03.1-05 was also amended by section 1 of Senate Bill No. 2093, chapter 210.

## CHAPTER 81

### SENATE BILL NO. 2246

(Senator Luick)

AN ACT to amend and reenact subsection 5 of section 4.1-20-18 of the North Dakota Century Code, relating to compensation for soil conservation district board members.

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

**SECTION 1. AMENDMENT.** Subsection 5 of section 4.1-20-18 of the North Dakota Century Code is amended and reenacted as follows:

5. a. Upon a majority vote of the supervisors, ~~the supervisors of a soil conservation district are entitled to receive compensation of up to sixty-two dollars and fifty cents for attending each regular or special meeting or for attending other meetings or events in the performance of their official duties. Supervisors of soil conservation districts are entitled to receive travel and subsistence expenses necessarily incurred in attending district, state, or other meetings. The compensation and all other expenses including travel incurred by district supervisors while transacting district business must be paid from district funds~~while performing duties as a member, the soil conservation district board shall provide to each member:
- (1) Compensation of at least seventy-five dollars per day but not more than the rate set for a member of the legislative assembly under section 54-03-20;
  - (2) An allowance for meals and lodging at the rate set in section 44-08-04;  
and
  - (3) Mileage and travel expenses at the rate set in section 54-06-09.
- b. All compensation and expenses under this subsection must be paid from district funds.

Approved March 22, 2023

Filed March 23, 2023

## CHAPTER 82

### HOUSE BILL NO. 1515

(Representatives Holle, Christensen, Dakane, Henderson, Hoverson, Prichard, Rios,  
Toman, Tveit)  
(Senators Myrdal, Schaible)

AN ACT to create and enact a new section to chapter 4.1-25 of the North Dakota Century Code, relating to the sale of raw milk directly to a consumer.

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

**SECTION 1.** A new section to chapter 4.1-25 of the North Dakota Century Code is created and enacted as follows:

#### **Sale of raw milk directly to a consumer - Prohibitions - Exemptions.**

1. A farm may sell raw milk directly to the end consumer for personal consumption.
2. A farm may not sell raw milk to a wholesaler or retail store for mass consumption under this chapter. The seller shall only sell milk within this state. The sale may not involve interstate commerce. Raw milk may not be donated.
3. A farm selling raw milk under the provisions of this section is not subject to any other provision of this chapter, chapters 4.1-05, 4.1-26, 19-02.1, or 23-9, or title 64.

Approved April 24, 2023

Filed April 24, 2023

## CHAPTER 83

### SENATE BILL NO. 2100

(Agriculture and Veterans Affairs Committee)  
(At the request of the Agriculture Commissioner)

AN ACT to amend and reenact sections 4.1-31-01 and 4.1-31-16 of the North Dakota Century Code, relating to the definition of custom exempt establishments and official establishments and registration and licensure of meat processing businesses.

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

**SECTION 1. AMENDMENT.** Section 4.1-31-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **4.1-31-01. Definitions.**

1. "Adulterated" means a carcass or meat food product:
  - a. That includes a poisonous or harmful substance that may render it injurious to health;
  - b. That includes a chemical pesticide that is unsafe under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
  - c. That includes a food or color additive that is unsafe under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
  - d. That includes a filthy, putrid, or decomposed substance or is for any other reason unfit for human food;
  - e. That has been prepared, packed, or held under unsanitary conditions;
  - f. That includes the product of an animal that has died in a manner other than slaughter or includes the product of an animal condemned by reason of disease that existed at the time of slaughter;
  - g. The container of which includes a poisonous or harmful substance that may make the contents harmful to health;
  - h. That has been intentionally subjected to radiation, unless the use of the radiation conformed with a regulation or exemption in effect under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
  - i. That is damaged or inferior and that damage or inferiority has been concealed; or
  - j. That has had a substance added to it or mixed or packed with it so as to increase its bulk or weight, or make it appear better or of greater value than it is.

2. "Animal" includes cattle, swine, sheep, goats, farmed cervidae, llama, horses, equines, bison, other large domesticated animals, domesticated rabbits, and poultry.
3. "Carcass" includes all or any part of an animal carcass.
4. "Container" means a receptacle of a meat food product.
5. "Custom exempt establishment" means an establishment as determined by the commissioner where slaughter and processing activities of an animal carcass or meat food products are done as a service for only the owner of the animal and the meat is returned to the owner for personal use.
6. "Custom processing" means slaughtering, eviscerating, dressing, or processing an animal carcass or meat food products for the owner of the animal carcass or the meat food products, if all meat food products derived from the custom processing are returned to that owner.
- 6-7. "Inspector" means an inspector appointed by the commissioner to perform duties under this chapter.
- 7-8. "Intrastate commerce" means commerce within this state.
- 8-9. "Meat" means the edible flesh of an animal born and harvested for the purpose of human consumption.
- 9-10. "Meat food product" means a product usable as human food which contains any part of a carcass from an animal born and harvested for the purpose of human consumption. The term does not include any product that contains any part of an animal carcass in a relatively small proportion or which historically has not been considered by consumers as a product of the meat food industry, and which is not represented as a meat food product.
11. "Official establishment" means an establishment as determined by the commissioner at which state inspection of the slaughter of livestock or poultry or the processing of meat or meat food products for human consumption is maintained under the authority of this chapter, but does not include:
  - a. Establishments subject to federal inspection.
  - b. Custom exempt establishments.
- 10-12. "Poultry" includes domesticated fowl bred for the primary purpose of producing eggs or meat, or both, including chickens, turkeys, ostriches, emus, rheas, cassowaries, waterfowl, and game birds, but excluding doves and pigeons.
- 11-13. "Prepared" means slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed.

**SECTION 2. AMENDMENT.** Section 4.1-31-16 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-31-16. Registration and licensure of business.**

1. A person may not engage in intrastate business as a meat broker, renderer, or animal food manufacturer; a wholesaler of animal carcasses intended for human food or other purposes; a public warehouse operator storing carcasses of animals in or for intrastate commerce; or a buyer, seller, or transporter of dead, dying, disabled, or diseased animals, or the carcasses of animals that died other than by slaughter, unless the person first provides the commissioner with the person's name, the address of each place of business under which the person conducts business, and all trade names under which the person conducts business.
2. A person, in order to operate under this chapter, shall obtain a license in accordance with the rules adopted by the commissioner. Application for a license must be made on forms provided by the commissioner. The commissioner may refuse to issue a license if the applicant or the establishment of the applicant is not in compliance with this chapter and related rules. If the commissioner finds that the person to which the license is issued violates this chapter or related rules, the commissioner may suspend or revoke the license, or upon revocation and with good cause, refuse to issue a new license.
3. A person applying for a license pursuant to this section shall pay a license fee to the commissioner as follows:
  - a. The license fee for an official establishment is twenty-five dollars;
  - b. The license fee for a custom exempt establishment is twenty-five dollars; and
  - c. The license fee for any other establishment or entity required to be licensed under this chapter is twenty-five dollars.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 84

### HOUSE BILL NO. 1100

(Agriculture Committee)  
(At the request of the Agriculture Commissioner)

AN ACT to amend and reenact section 4.1-31-01.1 of the North Dakota Century Code, relating to the federal meat inspection.

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

**SECTION 1. AMENDMENT.** Section 4.1-31-01.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **4.1-31-01.1. Federal meat inspection regulations.**

All federal meat and poultry inspection regulations effective as of ~~October 1, 2019~~October 19, 2022, as provided under title 9, Code of Federal Regulations, parts 301-320, 325, 329, 381, 391, 416-418, 424, 430, 441, 442, and 500, but excluding parts 307.5 and 381.38, are incorporated by reference and made a part of this title.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 85

### HOUSE BILL NO. 1302

(Representatives Schreiber-Beck, Beltz, Fisher, Kiefert)

AN ACT to amend and reenact sections 4.1-37-03 and 4.1-37-04 of the North Dakota Century Code, relating to anhydrous ammonia facility applications.

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

**SECTION 1. AMENDMENT.** Section 4.1-37-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **4.1-37-03. License required - Anhydrous ammonia facilities and mobile storage container.**

1. The owner or operator of an anhydrous ammonia storage facility or a mobile storage container shall apply to the agriculture commissioner ~~and to the board of county commissioners~~ for a license to site and operate the facility or mobile storage container. Neither an anhydrous ammonia storage facility nor mobile storage container may be operated without a license issued by the agriculture commissioner ~~and the board of county commissioners of the county in which the facility is located.~~
2. Any permanent anhydrous ammonia storage facility constructed before July 1, 1985, is exempt from the siting requirements of this chapter and may receive a license under this chapter regardless of noncompliance with the siting requirements.
3. The commissioner ~~or the board~~ may deny a license for failure:
  - a. Failure to remit the proper fee ~~for failure~~;
  - b. Failure to comply with the siting requirements of this chapter and rules adopted under this chapter if constructed after June 30, 1985, ~~or for failure to comply with local siting requirements. The agriculture commissioner also may deny a license if the~~; or
  - c. The facility does not failing to meet the initial inspection standards required by this chapter and by any rules adopted under this chapter.
4. To obtain a license, an applicant shall submit with the application ~~two sets of drawings or photographs showing, and two a signed affidavits~~ affidavit stating, the facility or mobile downloading site has been measured and meets the siting requirements. The drawings or photographs must show the proposed location of the tank and the surroundings in all directions. ~~A set of drawings or photographs must be provided to the agriculture commissioner and a set must be provided to the board of county commissioners.~~
5. An applicant for a mobile storage container license also shall submit a certification from the United States department of transportation.

6. The agriculture commissioner shall provide the board of county commissioners, of the county in which the facility is located, a written notification of intent to issue a storage facility operator's license for a new proposed facility. The written notification must include copies of the submitted application materials. Upon receipt of the notification, the county has forty-five days to request an allowance for a local zoning review. If a local zoning review is requested, the agriculture commissioner shall allow the county sixty days to complete the review and give written approval. If the county fails to respond within the specified time frame the agriculture commissioner may issue a license. If the county applies additional zoning requirements, the agriculture commissioner may require compliance with local ordinance before issuing a license.

**SECTION 2. AMENDMENT.** Section 4.1-37-04 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-37-04. State license fee.**

The agriculture commissioner shall charge a one-time twenty-five dollar fee for a private anhydrous ammonia storage facility or a mobile storage container license, and a one-time one hundred dollar fee for a retail anhydrous ammonia storage facility or a mobile storage container license. Expansion of an existing anhydrous ammonia storage facility does not require reapplication for licensing, but all siting requirements must be met. The license is valid indefinitely but may not be transferred. A new license is required when an anhydrous ammonia storage facility changes ownership. If a storage facility changes ownership, the agriculture commissioner shall provide a written notification to the county when the commissioner issues a license to the new owner.

Approved March 20, 2023

Filed March 21, 2023

## CHAPTER 86

### SENATE BILL NO. 2324

(Senator Hogan)

AN ACT to amend and reenact subsection 2 of section 4.1-39-02 of the North Dakota Century Code, relating to the membership of the crop protection product harmonization and registration board.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 4.1-39-02 of the North Dakota Century Code is amended and reenacted as follows:

2. The ~~representative of the crop protection product manufacturing industry and~~ the director of the agricultural experiment station shall serve as a nonvoting member. The governor or the governor's designee shall serve as chairman of the board.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 87

### HOUSE BILL NO. 1099

(Agriculture Committee)  
(At the request of the Agriculture Commissioner)

AN ACT to amend and reenact subsection 3 of section 4.1-47-04 and section 57-43.1-03 of the North Dakota Century Code, relating to complaints to the proper weed control authority and the refund of tax for fuel used for an industrial purpose.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 4.1-47-04 of the North Dakota Century Code is amended and reenacted as follows:

3. Except as otherwise provided, forward all signed complaints to the proper weed control authority; and

**SECTION 2. AMENDMENT.** Section 57-43.1-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-43.1-03. Refund of tax for fuel used for an industrial purpose - Reduction for agricultural products utilization fund.**

Any consumer who buys or uses any motor vehicle fuel for an industrial purpose on which the motor vehicle fuel tax has been paid may file a claim with the commissioner for a refund under this chapter. ~~The amount of the tax refund provided for in this section must be reduced by one-half cent per gallon [3.79 liters], except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users, and the one-half cent per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural products utilization fund.~~

Approved March 20, 2023

Filed March 21, 2023

## CHAPTER 88

### SENATE BILL NO. 2062

(Agriculture and Veterans Affairs Committee)  
(At the request of the State Seed Department)

AN ACT to amend and reenact subsection 1 of section 4.1-53-48, subsection 3 of section 4.1-53-57, subsection 2 of section 4.1-53-61, subsection 2 of section 4.1-55-17, and section 4.1-57-22 of the North Dakota Century Code, relating to requirements for certification under the plant variety protection act; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 4.1-53-48 of the North Dakota Century Code is amended and reenacted as follows:

1. If a certificate of plant variety protection issued under the Plant Variety Protection Act [7 U.S.C. 2121 et seq.], as amended through July 31, ~~2020~~2022, specifies that the variety may be sold only as a class of certified seed, that seed must be certified by an official seed-certifying agency before it can be advertised for sale, offered for sale, or sold.

**SECTION 2. AMENDMENT.** Subsection 3 of section 4.1-53-57 of the North Dakota Century Code is amended and reenacted as follows:

3. Any person found guilty of violating this chapter or the rules implementing this chapter is subject to a civil penalty in an amount not to exceed ten thousand dollars for each violation. The civil penalty may be imposed ~~by a court in a civil proceeding or~~ by the seed commissioner. The seed commissioner may make application to the district court to compel payment of civil penalties imposed under this section.

**SECTION 3. AMENDMENT.** Subsection 2 of section 4.1-53-61 of the North Dakota Century Code is amended and reenacted as follows:

2. Seed grown by a producer and sold by that producer without advertising and without using a third party as an agent or broker to effect the sale, provided this exemption is not applicable if the seed is a variety protected by the Plant Variety Protection Act [7 U.S.C. 2321 et seq.], as amended through July 31, ~~2020~~2022.

**SECTION 4. AMENDMENT.** Subsection 2 of section 4.1-55-17 of the North Dakota Century Code is amended and reenacted as follows:

2. Any person willfully violating this chapter is subject to a civil penalty in an amount not exceeding ten thousand dollars for each violation. The civil penalty may be imposed ~~by a court in a civil proceeding or~~ by the seed commissioner. The seed commissioner may make application to the district court to compel payment of civil penalties imposed under this section.

**SECTION 5. AMENDMENT.** Section 4.1-57-22 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-57-22. Violations of chapter - Penalty.**

1. A person is guilty of a class A misdemeanor and subject to a civil penalty in an amount up to ~~one~~ten thousand dollars per violation, which may be imposed by ~~a court or~~ by the seed commissioner in an administrative hearing, if the person:
  1. a. Makes any false statement or report as to the grade, condition, markings, quality, or quantity of potatoes received or delivered, or acts in a manner designed to deceive the consignor or purchaser of the potatoes;
  2. b. Breaches any contract for the purchase or sale of potatoes to which the person was a party unless the breach is based on a state inspection certificate, secured with reasonable promptness after receipt of the shipment and showing that the kind or quality of potatoes is not that which was purchased or ordered;
  3. c. Fails to account for potatoes or to pay for potatoes within the time required by this chapter;
  4. d. Purchases for the person's own account any potatoes received on consignment, either directly or indirectly, without the consent of the consignor;
  5. e. Issues false or misleading market quotations;
  6. f. Cancels any quotations during the period advertised by the person;
  7. g. Makes any false or misleading statement on an application for licensure as a wholesale potato dealer;
  8. h. Increases the sales charges on shipped potatoes by means of fictitious sales;
  9. i. Receives potatoes from foreign states or countries for sale or resale, within or outside this state, and gives the purchaser the impression through any method of advertising or description that the potatoes are from a source other than their true origin; or
  10. j. Violates this chapter or any rule implementing this chapter.
2. The seed commissioner may make application to the district court to compel payment of civil penalties imposed under this section.

Approved March 20, 2023

Filed March 21, 2023

## CHAPTER 89

### HOUSE BILL NO. 1393

(Representatives D. Johnson, Brandenburg, Thomas)  
(Senators Luick, Weber)

AN ACT to create and enact chapters 4.1-58, 4.1-59, 4.1-61, and 4.1-62 of the North Dakota Century Code, relating to grain and seed warehouses, grain buyers, insolvent grain warehousemen, uniform accounting for public elevators and warehouses, and credit-sale contracts indemnity from title 60; to amend and reenact subsection 4 of section 41-07-10 and section 51-23-04 of the North Dakota Century Code, relating to cross-references to repealed laws; to repeal chapters 60-02, 60-02.1, 60-04, 60-05, and 60-10 of the North Dakota Century Code, relating to grain and seed warehouses, grain buyers, insolvent grain warehousemen, uniform accounting for public elevators and warehouses, and credit-sale contracts indemnity; to provide a penalty; and to provide a continuing appropriation.

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

**SECTION 1.** Chapter 4.1-58 of the North Dakota Century Code is created and enacted as follows:

##### **4.1-58-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Credit-sale contract" means a written contract for the sale of grain under which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in section 4.1-58-21. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only that part of the contract is a credit-sale contract.
2. "Deferred-payment contract" means a credit-sale contract for which the amount owed for the sale of grain has been established, but the payment is postponed until a later date.
3. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown grain or grass seed. "Grain" as defined in this chapter does not include grain or grass seeds owned by or in the possession of the warehouseman which have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.
4. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.

5. "Public warehouse" means an elevator, mill, warehouse, subterminal, grain warehouse, terminal warehouse, or other structure in which grain is received for storing, buying, selling, shipping, or processing for compensation.
6. "Public warehouseman" means the person operating a public warehouse located or doing business within this state, regardless of whether the owner or operator resides within this state. The term does not include a person permitted to sell seed under chapter 4.1-53, if that person does not store grain for the public and buys grain only for processing and subsequent resale as seed, or an authorized dealer or agent of a seed company holding a permit in accordance with section 4.1-53-43.
7. "Receipts" means grain warehouse receipts, scale tickets, checks, or other memoranda given by a public warehouseman for, or as evidence of, the receipt, storage, or sale of grain except when the memoranda was received as a result of a credit-sale contract.
8. "Receiving station" means any facility other than an individually licensed warehouse which is used by a licensed public warehouseman to receive and temporarily store grain before transferring the grain to the warehouseman's primary licensed warehouse location or delivering it directly to market.

#### **4.1-58-02. Duties of the commissioner.**

The commissioner shall:

1. Exercise general supervision of the public warehouses of this state, including the handling, weighing, and storing of grain, and the management of public warehouses.
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.
3. Examine and inspect, during ordinary business hours, any licensed warehouse, including all books, documents, and records.
4. Require the filing of reports pertaining to the operation of the warehouse.
5. Make all proper rules for carrying out and enforcing any law in this state regarding public warehouses.

#### **4.1-58-03. Federal licensed inspector and employees.**

The commissioner may employ a federal licensed inspector and other employees as necessary to carry out this chapter.

#### **4.1-58-04. Grain marketing - Procedure for resolving disputes.**

1. If any dispute or disagreement arises between the person receiving and the person delivering grain at any public warehouse as to the proper grade, dockage, vomitoxin level, moisture content, or protein content of any grain, an average sample of at least three pints [1.65 liters] of the grain in dispute may be taken together by both parties interested.
  - a. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was delivered.

- b. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties for inspection by a federal licensed inspector, or a mutually agreed-upon third party, who will examine the grain and adjudge what grade, dockage, vomitoxin level, moisture content, or protein content the sample of grain is entitled to under the inspection rules and grades adopted by the secretary of agriculture of the United States.
  - c. The person requesting the inspection service shall pay for the inspection.
  - d. If the grain in question is damp, otherwise out of condition, or if moisture content is in dispute, the sample must be placed in an airtight container.
  - e. Payment for the grain involved in the dispute must be made and accepted on the basis of the determination made by the federal licensed inspector or third party.
  - f. All other quality factors may also be considered in determining the price of the grain.
  - g. An appeal of the determination made by a third party other than a federal licensed inspector may be made to a federal licensed inspector.
  - h. An appeal of the determination made by a federal licensed inspector may be made as provided under the United States Grain Standards Act [Pub. L. 103-354; 108 Stat. 3237; 7 U.S.C. 79(c) and (d)] and under 7 CFR 800.125-800.140.
  - i. A person not abiding by a final determination is liable for damage resulting from not abiding by the determination.
2. If a dispute or disagreement arises between the person delivering grain and the person receiving grain as to the determination of quality factors of grain purchased or delivered for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States, an average sample of at least three pints [1.65 liters] of the grain in dispute may be taken together by the parties interested.
- a. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was delivered.
  - b. If the grain is damp or otherwise out of condition, the sample must be placed in an airtight container.
  - c. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties, for inspection by a federal licensed inspector, or a mutually agreed-upon third party, who may examine the grain and determine the quality factors in dispute.
  - d. The person requesting the inspection service shall pay for the inspection.
  - e. The determination made by the inspector, or the third party, must be used in the settlement of the dispute.

#### **4.1-58-05. Notice of procedures for resolving disputes over grain.**

A public warehouse shall post a notice containing the procedures specified in section 4.1-58-04 for resolving disputes. The commissioner shall prescribe the form of the notice and shall provide a copy of the notice to each public warehouse. The public warehouseman shall post the notice in the grain inspection room of the warehouse. The notice must specifically mention the procedure for resolving disputes applies to the grade, dockage, moisture content, and protein content of grain and to the quality factors of grain for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States.

#### **4.1-58-06. Release of records - Confidentiality.**

1. As a condition of licensure under section 4.1-58-08, an applicant shall agree to provide to the commissioner, upon request, any financial record the commissioner deems relevant for purposes related to:
  - a. The issuance or renewal of a public warehouse license; or
  - b. An investigation after issuance or renewal of a public warehouse license.
2. As a condition of licensure, an applicant shall file a records release with the commissioner, authorizing the commissioner to obtain from any source any financial record the commissioner deems relevant for purposes related to:
  - a. The issuance or renewal of a public warehouse license; or
  - b. An investigation after issuance or renewal of a public warehouse license.
3. Information obtained by the commissioner under this section is confidential and may be provided only:
  - a. To federal authorities in accordance with federal law;
  - b. To the attorney general, state agencies, and law enforcement agencies, for use in the pursuit of official duties; and
  - c. As directed by an order of a court pursuant to a showing of good cause.

#### **4.1-58-07. Public warehouse license - Financial criteria to be met.**

1. To be eligible to receive an annual public warehouse license, an applicant shall submit financial documentation to the commissioner verifying the applicant has satisfactory net worth and working capital, as determined by the commissioner.
2. A licensed public warehouseman or an applicant for initial licensure shall report balance sheets and income statements to the commissioner annually on written application for initial licensure or license renewal if the applicant purchased up to ten million dollars worth of grain during the previous licensing period, or intends to purchase up to ten million dollars worth of grain during the first year of operation.
3. As a condition of licensure, an applicant shall provide the commissioner, upon request, any financial record or bank verification release the commissioner deems relevant for the purpose of verifying the financial information of an applicant pursuant to the requirements of this section.

4. As a condition of licensure, a new applicant must:
  - a. Pass a background check;
  - b. Have a satisfactory credit score, as determined by the commissioner; and
  - c. Be a responsible person with a good business reputation, as determined by the commissioner, that:
    - (1) Is in the public warehouse business;
    - (2) Has knowledge of, and experience with, generally accepted grain warehousing and handling practices;
    - (3) Is competent and willing to operate a public warehouse in accordance with state and federal regulations; and
    - (4) Has not committed fraud or a criminal offense indicating a lack of business integrity or honesty that undermines the person's responsibility as a warehouse operator.

#### **4.1-58-08. Public warehouse license - Fee - Posting of license.**

1. A license must be obtained from the commissioner for each public warehouse in operation in this state. A license issued is for one year and terminates on the thirty-first day of July in the year of expiration. An initial annual license application that becomes effective after June first does not expire until July thirty-first of the following calendar year.
2. A license may not describe more than one public warehouse nor grant permission to operate a public warehouse other than the one described.
3. a. The annual license fee for a public warehouse is:
  - (1) Four hundred dollars for a warehouse that purchased up to one million dollars worth of grain during the previous licensing period, or intends to purchase up to one million dollars worth of grain during the first year of operation;
  - (2) Eight hundred dollars for a warehouse that purchased more than one million dollars worth of grain but not more than ten million dollars worth of grain during the previous licensing period, or intends to purchase more than one million dollars worth of grain but not more than ten million dollars worth of grain during the first year of operation; and
  - (3) One thousand two hundred dollars for a warehouse that purchased more than ten million dollars worth of grain during the previous licensing period, or intends to purchase more than ten million dollars worth of grain during the first year of operation.
- b. An application for an annual license renewal received after July fifteenth must include an additional one hundred dollar fee per warehouse.
4. If a public warehouseman operates two or more warehouses in the same city or railroad siding, in conjunction with each other and with the same working

force, and keeps one set of books and records for the warehouses, and issues one series of scale tickets, warehouse receipts, checks, and credit-sale contracts for the grain stored and purchased, only one license is required for the operation of all the warehouses. When two or more warehouses are operated under one license, the license fee is based upon the combined value of the grain purchased by the warehouses during the previous licensing period.

5. The license must be posted in a conspicuous place in the public warehouse.

#### **4.1-58-09. Warehouseman to operate warehouse owned by another.**

A warehouseman may operate under its license a warehouse owned by another person. Storage performed for the person in the entire licensed warehouse is excepted from the storage rate and discrimination provisions contained in sections 4.1-58-19 and 4.1-58-22 to the extent of the person's owned capacity in the warehouse.

#### **4.1-58-10. Receiving stations.**

1. A licensed public warehouseman may establish a receiving station without a separate warehouse license for that facility if:
  - a. The station is colocated with another licensed public warehouse, the operator of which takes delivery of the grain on behalf of the warehouseman that established the receiving station.
  - b. The storage space used by the receiving station is used solely by the receiving station and is not licensed as part of the warehouse located at that site.
  - c. The grain taken in by the receiving station is not commingled with other grain at that site.
  - d. The warehouseman establishing the station requests and receives permission from the commissioner to increase licensed capacity to include the space to be used at the receiving station.
  - e. Grain received at the receiving station is recorded on scale tickets issued by the warehouseman that established the station and is covered by that warehouseman's bond.
  - f. Warehouse-receipted grain received at the receiving station is available for redelivery to the receipt holder at that location even if the station has been closed. A charge for redelivery must be stated in the warehouseman's redelivery policy.
2. The storage space used by a receiving station need not be physically disconnected from the facilities of the other licensed warehouse located at that site.

#### **4.1-58-11. Bond filed by public warehouseman.**

1. Before a license is effective for a public warehouseman, the applicant for the license shall file a bond with the commissioner which must:

- a. Be in a sum not less than one hundred thousand dollars for any one warehouse.
  - b. Be continuous, unless the corporate surety by certified mail notifies the licensee and the commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.
  - c. Run to this state for the benefit of all persons storing or selling grain in that warehouse.
  - d. Be conditioned:
    - (1) For the faithful performance of the licensee's duties as a public warehouseman.
    - (2) For compliance with the provisions of law and the rules of the commissioner relating to the storage and purchase of grain by the warehouseman.
  - e. Specify the location of each public warehouse intended to be covered by the bond.
  - f. Be for the specific purpose of:
    - (1) Protecting the holders of outstanding receipts.
    - (2) Covering the costs incurred by the commissioner in the administration of this chapter in the event of the licensee's insolvency.
  - g. Not accrue to the benefit of any person entering a credit-sale contract with a public warehouseman.
2. The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which the bond is in force but, for losses during an annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.
  3. The commissioner shall set the amount of the bond and may require an increase in the amount of a bond as the commissioner deems necessary to accomplish the purposes of this section. The amount of the bond must be:
    - a. Based on the dollar value of the grain purchased; and
    - b. Calculated using the value of the amount of grain intended to be purchased by a new licensee during the first year of operation, or the three-year rolling annual average of the value of grain purchased at the time of license renewal.
  4. The surety on the bond must be a corporate surety company, approved by the commissioner, and authorized to do business within the state. The commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond if, in the commissioner's judgment, the cash, negotiable instrument, or personal surety bond properly will protect the holders of outstanding receipts.

5. One bond only may be given for a line of elevators, mills, or warehouses, owned, controlled, or operated by one individual, firm, corporation, or limited liability company, and the bond must be construed to cover the elevators, mills, or warehouses, as a whole and not a specific amount for each.

#### **4.1-58-12. Bond cancellation - Release of surety.**

1. The surety on a bond is released from all future liability accruing on the bond after the expiration of ninety days from the date of receipt by the commissioner of notice of cancellation by the surety or on a later date specified by the surety. This provision does not operate to relieve, release, or discharge the surety from any liability already accrued or which accrues before the expiration of the ninety-day period.
2. Unless the warehouseman files a new bond at least thirty days before liability ceases, the commissioner, without hearing, immediately shall suspend the warehouseman's license and the suspension may not be removed until a new bond has been filed and approved by the commissioner.
3. If a license is suspended under this section, the warehouseman shall give notice of the suspension to each receipt holder having grain stored in the warehouse.
4. The warehouseman shall notify each receipt holder having grain stored in the warehouse that the grain must be removed from the warehouse or the grain will be priced and redeemed in cash in accordance with section 4.1-58-40.

#### **4.1-58-13. Bond discount.**

1. The licensee may request a bond reduction based upon the licensee's conversion policy.
  - a. The required bond is reduced by thirty percent for a licensee that establishes and follows a conversion policy approved by the commissioner of ten days or fewer.
  - b. The required bond is reduced by fifteen percent for a licensee that establishes and follows a conversion policy approved by the commissioner of eleven to twenty-one days.
2. A reduction under this section may not be used to reduce the required bond below the minimum bond set in law.

#### **4.1-58-14. Revocation and suspension.**

1. Except as provided in subsection 2, the commissioner may suspend or revoke the license of a warehouseman for cause upon notice and hearing.
2. Notwithstanding any other provision of this chapter, the commissioner immediately shall suspend the license of a warehouseman for failure at any time to have or to maintain either a bond or insurance policy in the amount and type required.
3. During a license suspension, the warehouseman, upon the commissioner's approval, may operate the warehouse and purchase or redeliver grain previously received, but may not receive additional grain for purchase.

storage, shipping, or processing. The warehouseman may sell grain only with the prior approval of the commissioner.

#### **4.1-58-15. Scale ticket - Contents - Conversion.**

1. Every public warehouseman, upon receiving grain into the warehouse, shall issue a uniform scale ticket for each load of grain received.
  - a. The scale tickets must be numbered consecutively, and one copy of each ticket must be retained and remain as a permanent record.
  - b. The original ticket must be delivered to the individual from which the grain is received, upon receipt of each load of grain.
  - c. All scale tickets must be converted into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts, within thirty days after the grain is delivered to the warehouse.
2. This chapter does not require a warehouseman to receive, store, or purchase grain. A warehouseman shall publish and post, in a conspicuous place in the warehouse, a publication identifying whether storage will be available to patrons or whether grain will be accepted via cash or a credit-sale contract arrangement.
3. A producer that fails to convert a scale ticket in accordance with subsection 1 forfeits any trust fund or credit-sale contract indemnity fund protection provided under sections 4.1-58-11, 4.1-58-21, and 4.1-58-45.

#### **4.1-58-16. Purchase by warehouseman - Form of receipt.**

1. A warehouseman may print on each warehouse receipt issued by the warehouseman a receipt executed by the owner for use if the grain represented on the receipt is purchased by the warehouseman. The warehouseman shall record the purchase, as to the amount paid per bushel, on the stub record or copy of the warehouseman's warehouse receipt books. The receipt must be in substantially the following form:

Received from \_\_\_\_\_, \_\_\_\_\_ dollars and \_\_\_\_\_ cents net, in full payment for the grain represented by this warehouse receipt. Gross price per bushel \_\_\_\_\_, storage per bushel \_\_\_\_\_, net price per bushel \_\_\_\_\_. I certify that I am the owner of the grain for which this receipt was issued, and that there are no liens, chattel mortgages, or other claims against the grain represented by this receipt.

Dated \_\_\_\_\_, \_\_\_\_\_. Signed \_\_\_\_\_  
Owner.

2. This section does not affect in any manner the conditions of the storage contract specified in sections 4.1-58-19 and 4.1-58-20.

#### **4.1-58-17. Warehouse receipts - Copy.**

1. A warehouseman shall provide a stub record or copy of each warehouse receipt issued by the warehouseman, showing:

- a. The serial number and date of receipt.
  - b. The kind and grade of grain.
  - c. The dockage and net weight of the grain.
2. The warehouseman shall retain possession of the record or copy for inspection by the commissioner and others properly interested.

**4.1-58-18. Warehouse receipt - Contents and provisions.**

A warehouseman shall provide a warehouse receipt that must:

1. Be issued only upon the actual delivery of grain to the warehouse for storage.
2. Contain the following provisions:
  - a. The place and date the grain was received;
  - b. The name and address of the owner of the grain;
  - c. The kind and grade of the grain according to the official standards established by the secretary of agriculture of the United States, except that receipts issued for dry edible beans must reference, in lieu of a grade designation, the number of the scale tickets containing a description of the beans, including the percentage of foreign material, splits, check seed coats, total pick, and moisture; and
  - d. The gross weight, dockage, and net weight of the grain according to this state's standard weight.
3. Be numbered consecutively, and no two receipts bearing the same number and series may be issued during the same year.
4. Not be altered by any warehouseman by the insertion in the receipt of any language limiting or modifying its liability as imposed by the law.
5. Contain, either on its face or reverse side, the warehouse and storage contract provided for in section 4.1-58-19.
6. Have printed upon the receipt the following words: "All storage contracts on grain in store at public grain warehouses terminate on \_\_\_\_\_, as identified in the publication required by section 4.1-58-19. If storage charges and warehouseman's advances remain unpaid at the time of termination, the warehouseman may sell a sufficient amount of grain to pay the charges and advances. The receipt holder shall surrender the receipt to the issuing warehouseman for settlement."

**4.1-58-19. Warehouse and storage contract - Storage rates - Terminal delivery.**

1. A warehouse receipt must contain, either on its face or reverse side, the following warehouse and storage contract:

This grain is received, insured, and stored subject to the laws and rules of the state of North Dakota, the terms of this contract, and the charges and

conditions stated herein and as filed with the North Dakota agriculture commissioner. Upon surrender of this receipt and payment or tender of all applicable charges, the amount, kind, and grade of grain identified in this receipt will be delivered to the person named above or the person's order as rapidly as due diligence, care, and prudence will permit. At the option of the holder of this receipt, the amount, kind, and grade of grain for which this receipt is issued, upon demand, must be delivered back to the holder at any terminal point customarily shipped to, or at the place where received, upon the payment of any charges for receiving, handling, storage, and insurance and in case of terminal delivery, the payment in addition to the above of the regular freight charges on the gross amount called for by this ticket or in lieu thereof, a receipt issued by a bonded warehouse or elevator company doing business at the terminal point. This receipt does not require the delivery of the identical grain specified herein, but an equal amount of grain of the same kind and grade must be delivered.

2. A warehouseman shall publish and post, in a conspicuous place in its warehouse, the fees that will be assessed for receiving, storing, processing, or redelivering grain and the termination date of its warehouse receipts. This publication must be filed with the commissioner as a part of the warehouse license process or annual renewal. The fees and termination date must be stated on the warehouse receipt issued for the grain. The fees or termination date may be changed upon filing a revised publication with the commissioner.

#### **4.1-58-20. Covenant against liens may be inserted in warehouse receipt.**

A public warehouseman also may insert in the warehouse receipt the following provision:

If any of the grain embraced in this receipt proves to be covered by a chattel mortgage or other lien, or the partial or absolute title proves to be in someone other than the person to whom this receipt was issued, the same, if discovered before the delivery of the grain, is sufficient reason for the refusal to deliver to the holder of the receipt, or if discovered after the delivery of the grain, the delivery is deemed an additional delivery for which the holder of this receipt, to whom the delivery is made, is accountable.

#### **4.1-58-21. Credit-sale contracts.**

1. A warehouseman 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 when 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:
  - a. The seller's name and address.
  - b. The conditions of delivery.
  - c. The amount and kind of grain delivered.
  - d. The price per unit or basis of value.
  - e. The date payment is to be made.

- f. The duration of the credit-sale contract.
  - g. Notice in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section 4.1-58-11. However, if the warehouseman has obtained bond coverage in addition to that required by section 4.1-58-11 and that coverage extends to the benefit of credit-sale contracts, the warehouseman may state that in the credit-sale contract along with the extent of the coverage.
2. The contract must be signed by both parties and executed in duplicate. An electronic signature satisfies the requirement. An unsigned contract must be considered an unconverted scale ticket in accordance with section 4.1-58-15. The warehouseman shall retain one copy and deliver one copy to the seller. Upon revocation, termination, or cancellation of a warehouseman'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. When a public warehouse is transferred under this chapter, credit-sale contracts may be assigned to another licensed public warehouseman.
  3. A warehouseman that uses deferred-payment contracts shall inform producers of bond protection.

#### **4.1-58-22. Discrimination by public warehouseman prohibited - Posting prices.**

1. A public warehouseman may not discriminate:
  - a. In the buying, selling, receiving, and handling of grain or in the charges made or the service rendered to owners of stored grain;
  - b. In the receiving of grain offered for sale or storage;
  - c. In regard to the persons offering grain for sale or storage; or
  - d. Between points or stations except as the marketing factors or transportation costs or grain quality premiums may warrant.
2. A public warehouseman is not required to receive for storage any grain that is heating or otherwise out of condition. Storing grain free of charge is prohibited except as prescribed by law. A warehouseman shall post grain prices paid in a conspicuous place in the office or driveway of the warehouseman's place of business.

#### **4.1-58-23. Issuance of informal memoranda forbidden - Penalty.**

A warehouseman that fails to issue a receipt, as is provided in sections 4.1-58-16 and 4.1-58-17, or issues slips, memoranda, or any other form of receipt embracing a different warehouse or storage contract than is provided for specifically in this chapter, is guilty of a class A misdemeanor.

#### **4.1-58-24. Liability of warehouseman.**

A public warehouseman is liable to the owner for the delivery of the kind, grade, quality, and quantity of grain called for by the warehouse receipt. Unless otherwise agreed, the value of any difference in kind, grade, quality, and quantity must be settled at the price on the local market on the day the warehouseman receives written request for delivery. The warehouseman may withhold from delivery a sufficient quantity of grain, based upon the local market price, to satisfy the value of any difference in kind, grade, or quality.

#### **4.1-58-25. Records to be kept by public warehouseman.**

1. A public warehouseman shall keep a record of all grain received, stored, and shipped, stating the:
  - a. Weight.
  - b. Grade.
  - c. Dockage for dirt or other causes.
  - d. Name of owner.
  - e. Price paid.
  - f. Storage charge collected.
2. A warehouseman with a principal office or headquarters located outside this state shall make available, if requested, all books, documents, and records relevant to a warehouse in this state for inspection during ordinary business hours at any of the warehouseman's warehouses located in this state or other mutually acceptable place.

#### **4.1-58-26. Reports to be made by public warehouseman - Confidential information - Penalty for failure.**

1. Each licensed and bonded public warehouseman shall:
  - a. Prepare for each month a report giving facts and information called for on the form of report prepared by the commissioner. The report must contain or be verified by a written declaration the report is made under the penalties of perjury. The report may be called for more frequently if the commissioner deems necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The commissioner may make the information available for use by other governmental entities, but the commissioner may not release the information in a manner that jeopardizes the confidentiality of individual licensees.
  - b. File the report with the commissioner not later than the last day of the following month, and failure to file this report promptly is cause for revoking the warehouse license after due notice and hearing.
  - c. Keep a separate account of the grain business, if the warehouseman is engaged in handling or selling any other commodity, and under no circumstances may the grain account and other accounts be mixed.

- d. Submit additional information requested by the commissioner pursuant to a report or an inspection within five business days.
2. The commissioner may refuse to renew a license to any public warehouseman that fails to make a required report.

#### **4.1-58-27. Bailment not a sale.**

When grain is delivered to any public warehouse and an unconverted scale ticket or a warehouse receipt is issued, the delivery is a bailment and not a sale of the grain delivered. The grain delivered may not be liable to seizure upon process of a court in an action against the bailee, except in an action by an owner of the unconverted scale ticket or warehouse receipt to enforce the terms of the delivery or obtain redelivery of the delivered grain. In the event of the failure or insolvency of the warehouseman, all the grain in the warehouse, whether the grain is stored or not, first must be applied at all times to the satisfaction of receipts issued by the warehouseman.

#### **4.1-58-28. Receiptholder's lien.**

Grain contained in a warehouse, including grain owned by the warehouseman, is subject to a first priority lien for outstanding receiptholders storing, selling, or depositing grain in the warehouse. The lien created under this section is preferred to any lien or security interest for any creditor of the warehouseman regardless of the time when the creditor's lien or security interest attached to the grain. Notice of the lien created under this section need not be filed to perfect the lien. The lien created by this section is discharged as to grain sold by the warehouseman to a buyer in the ordinary course of business. The sale does not discharge the lien for an individual receiptholder in the remaining grain in the warehouse.

#### **4.1-58-29. Standard weights to be used - Exception.**

A person purchasing, selling, or storing grain in a public warehouse in this state may not use any measure for the grain other than the standard bushel, and no number of pounds may be used or called a bushel other than the number of pounds provided by law as the standard weight of the kind of grain in question, except during the months of October and November, not exceeding eighty-two pounds [37.19 kilograms], and during the months of December and January, not exceeding seventy-six pounds [34.47 kilograms], may be used as the standard weight per bushel of new ear corn.

#### **4.1-58-30. Federal grades to control - Grades to be posted.**

All public warehousemen shall purchase and store grain except dry edible beans in accordance with the official grades established by the secretary of agriculture of the United States, except as otherwise provided in rules and regulations applicable thereto adopted by federal officials pursuant to law.

1. Public warehousemen shall post in a conspicuous place in the public warehousemen's warehouse the official grades established and also any change that may be made.
2. Warehousemen of dry edible beans shall purchase, store, and deliver beans in accordance with the policy of the warehousemen which must be filed with the commissioner and posted in a conspicuous place in the warehouse of the public warehousemen.

3. Other grading standards may be used if mutually agreed to in writing by the warehouseman and the owner of the grain. However, the owner may demand the use of federal grading standards.
4. The commissioner, after a hearing, may prohibit the use of nonfederal grades.

#### **4.1-58-31. Grading of grain - Penalty.**

1. A public warehouseman before testing for grade any grain handled by the warehouseman shall remove and make due allowance for any dockage of the grain made by reason of the presence of straw, weed seeds, dirt, or any other foreign matter.
2. A public warehouseman that violates this section is guilty of a class B misdemeanor.

#### **4.1-58-32. Termination of public grain warehouse storage contracts - Notice to receipt holder.**

1. A storage contract terminates on the date identified in the publication required by section 4.1-58-19. If a different termination date is not identified in the publication, a storage contract on grain in a public grain warehouse terminates on June thirtieth of each year, except for a storage contract on dry edible beans which terminates on April thirtieth of each year.
2. Storage of grain in a public grain warehouse may be terminated by the receipt holder at any time before the applicable date by the payment of all legal charges and the surrender of the warehouse receipt, with a demand for delivery of the grain in storage, or notice to the public warehouseman to sell the stored grain.
3. Upon the expiration of the storage contract, the warehouseman is not obligated to renew the storage contract.
4. At least thirty days before the termination date of a storage contract, the public warehouseman shall notify the receipt holder by mail of the warehouseman's intention to terminate the storage contract on the date identified in the storage contract, unless the receipt holder, before that time, demands redelivery, authorizes sale, extends the storage contract, or enters a new contract with the public warehouseman for restorage. Failure to notify the receipt holder, as required by this section, results in the forfeiture of storage charges accrued for the grain during the previous twelve months.
5. In the absence of a demand for delivery, an order to sell, or an agreement between the public warehouseman and the receipt holder for storage after the termination date of the storage contract, the warehouseman, upon the expiration of the storage contract, may sell at the local market price on the close of business on that day, all stored grain of the receipt holder and tender to the receipt holder the proceeds of the sale, less accrued storage charges, and the public warehouseman's advances upon any previous storage contract of the receipt holder.

#### **4.1-58-33. Reissue warehouse receipts - Provisions.**

Upon payment of all legal accrued charges and the surrender to the warehouseman of a receipt, if the receipt holder and the warehouseman agree to

continue the storage contract, the warehouseman may extend the storage contract or issue a new warehouse receipt to the owner and cancel the former receipt by endorsing on the receipt the words: "Canceled by the issuance of warehouse receipt no. \_\_\_\_\_", inserting the number of the reissue warehouse receipt thereafter, and the holder's name must be signed thereto by the holder or by the holder's authorized agent. The reissue warehouse receipt must be designated by stamping on the receipt: "Reissue of warehouse receipt no. \_\_\_\_\_".

#### **4.1-58-34. Delivery of grain - Demand terminates storage charge.**

On the return and surrender of any receipt and the payment of all lawful charges, the grain represented on the receipt must be deliverable to the owner and is not subject to any further charge for storage after demand for delivery is made and proper facilities for receiving or shipping the grain have been provided. The owner of the receipt shall order the receptacle in which the grain covered by the owner's receipt is to be transported, and the grain must be delivered when the ordered receptacle is in proper condition for loading and is placed at the warehouse. The licensee may not assess receiving or redelivery fees on the grain redelivered during a suspension, following a revocation, or when the owner of the grain is taking redelivery because the licensee is unable to pay for the grain.

#### **4.1-58-35. Grain to be kept insured for benefit of owner by warehouseman.**

A public warehouseman license is not effective unless all grain in storage or on deposit in the warehouse is kept fully insured at the expense of the warehouseman for the benefit of the owner at the current market value of the grain against loss by fire, lightning, internal explosion, windstorm, cyclone, tornado, and other risks of direct physical loss as provided by the insurer in a policy approved by the insurance commissioner. An insurance policy covering grain in a public warehouse may not be transferred or assigned to any person for any purpose, except for grain that is not on warehouse receipt or deposit. The insurance policy must be continuous and may only be canceled in accordance with section 4.1-58-36.

#### **4.1-58-36. Insurance - Cancellation - Suspension of license.**

An insurance company shall give at least ten days' notice to the commissioner and the insured by certified mail return receipt requested before cancellation of an insurance policy required under section 4.1-58-35. The warehouseman shall notify each receiptholder having grain stored in the warehouse the grain must be removed from the warehouse or the grain will be priced and redeemed in cash in accordance with section 4.1-58-40.

#### **4.1-58-37. Destruction of grain in public warehouse - First lien by holder of outstanding receipt.**

The holder of an unconverted scale ticket or warehouse receipt issued by any public warehouseman has a first lien, to the extent of the value of the grain when lost at the place where held, on all insurance of the warehouse for any loss sustained by the receiptholder, on account of the loss of the grain by fire, tornado, or any other cause covered by the insurance policy.

#### **4.1-58-38. Refund of license fee by commissioner.**

If requested in writing, the commissioner shall refund the license fee of a public warehouse, or so much as in the commissioner's judgment is just and reasonable, if satisfactory proof is furnished the warehouse has been transferred to some other person, and the new owner has obtained a license for the same warehouse for the

unexpired period for which the original license was issued. If a warehouse is destroyed by fire or other cause, the license fee may be prorated as the commissioner may determine.

#### **4.1-58-39. Transfer of warehouse - Redemption of receipts.**

1. If a public warehouseman desires to transfer a warehouse, either by sale or lease to any other person, the warehouseman shall:
  - a. Notify the commissioner of the warehouseman's intention to transfer the warehouse, giving the name and address of the proposed lessee or purchaser.
  - b. Furnish a statement of all proper claims that may be filed or pending against the warehouseman pertaining to the storage, inspection, and marketing of grain, with a statement of:
    - (1) The number of bushels of grain of each kind and grade in store in the warehouse;
    - (2) The number and amount of receipts outstanding; and
    - (3) The names and addresses of the receiptholders.
  - c. Serve notice by registered mail, at least thirty days before the transfer, upon all receiptholders having claims against the warehouse to call for delivery of the grain covered by the receipts, and to pay all storage charges due, the warehouseman to make no charge for redelivery. The commissioner may waive the thirty-day notice period upon receipt of written consent of all receiptholders.
  - d. Transfer all stored grain undelivered at the expiration of the thirty-day period to the warehouseman's successor, if licensed, or to the nearest licensed warehouse for restorage, taking receipts for the restorage for the owner of the grain transferred.
  - e. Surrender to the commissioner the warehouseman's license for cancellation, at which time the proposed lessee or purchaser shall file in due form for a new license and tender a new bond for review by the commissioner, at which time, the commissioner, first being duly satisfied all the outstanding receipts have been redeemed, or that the redemption of all outstanding receipts has been provided for, the commissioner may permit a new license to become effective for the lessee or purchaser.
2. A sale, lease, or transfer of any warehouse may not be recognized by the commissioner except when made in accordance with this section.

#### **4.1-58-40. Going out of business - Redemption of receipts.**

1. If a public warehouseman ceases business through the destruction of a warehouse by fire or other cause, or through insolvency, the warehouseman shall redeem all outstanding unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse was destroyed or closed because of insolvency. The holder of the receipts, upon due notice, shall accept this price and surrender the receipts.

2. A public warehouseman that voluntarily ceases business or fails to renew an existing warehouse license or has the warehouse license revoked shall notify the commissioner and all outstanding receiptholders of the closing and redeem all outstanding unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse closed or at the option of the owner of the receipt redeliver the kind, grade, and quantity of grain called for by the unconverted scale ticket or warehouse receipt.
3. On commingled grain the value of over and under deliveries in quantity, grade, and protein must be settled in cash and priced on the market on the day of closing.

#### **4.1-58-41. Cease and desist.**

If a warehouseman engages in an activity or practice contrary to this chapter or related rules, the commissioner, upon the commissioner's own motion without complaint, with or without hearing, may order the warehouseman to cease and desist from the activity until further order of the commissioner. An order may include any corrective action up to and including license suspensions. A cease and desist order must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

#### **4.1-58-42. Agricultural contracts - Mediation or arbitration.**

If a written contract for the sale of grain does not contain provisions to settle disagreements concerning factors not governed by section 4.1-58-04, the parties shall attempt to resolve the disagreements through mediation or arbitration.

#### **4.1-58-43. Licensed warehouse capacity and condominium storage.**

1. Unless an entire warehouse facility is used for nonpublic purposes, all physically connected portions of the facility must be licensed in accordance with this chapter.
2. The warehouseman shall issue receipt memoranda for all grain received.
3. Facilities that are physically connected to the licensed warehouse may be sold under a condominium arrangement or leased to other entities for nonpublic use and sales and lease agreements must be based on the capacity of the bins involved and not on the number of bushels held in the space.
4. The licensee shall provide contents insurance and bond coverage for the space.
5. If a licensee becomes insolvent, the contents of the space must be considered an asset to the trust fund established under this chapter and owners and lessees are entitled to trust fund protection in a manner equal to all other valid grain receiptholders.

#### **4.1-58-44. Insolvency of warehouseman.**

A licensee is insolvent when the licensee refuses, neglects, or is unable upon proper written demand, including electronic communication, to pay for grain purchased or marketed by the licensee or to make redelivery or payment for grain stored.

#### **4.1-58-45. Trust fund established - Trustee.**

1. Upon the insolvency of a warehouseman, a trust fund must be established:
  - a. For the benefit of noncredit-sale receiptholders of the insolvent warehouseman, other than those that have waived their rights as beneficiaries of the trust fund in accordance with section 4.1-58-15; and
  - b. To pay the costs incurred by the commissioner in the administration of this chapter.
2. The trust fund consists of the following:
  - a. The grain in the warehouse of the insolvent warehouseman or the proceeds as obtained through the sale of the grain;
  - b. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the commissioner is appointed trustee;
  - c. The proceeds of insurance policies upon grain destroyed in the elevator;
  - d. The claims for relief, and proceeds from the claims for relief, for damages upon any bond given by the warehouseman to ensure faithful performance of the duties of a warehouseman;
  - e. The claims for relief, and proceeds from the claims for relief, for the conversion of any grain stored in the warehouse;
  - f. Unencumbered accounts receivable for grain sold before the filing of the claim that precipitated an insolvency;
  - g. Unencumbered equity in grain hedging accounts; and
  - h. Unencumbered grain product assets.
3. Upon the insolvency of a warehouseman, the commissioner shall act as trustee of the trust fund.

#### **4.1-58-46. Possession of grain.**

Upon the commissioner's appointment, the commissioner shall seek possession of the grain to be included in the trust fund. Upon the commissioner's possession of any grain in the warehouse, the commissioner shall sell the grain and apply the proceeds to the trust fund.

#### **4.1-58-47. Joinder of surety - Deposit of proceeds.**

The surety on the warehouseman's bond must be joined as a party to the insolvency proceeding upon a motion by the commissioner if the commissioner believes proceeds from the warehouseman's bond may be needed to redeem outstanding receipts issued by the warehouseman. If it appears in the best interests of the receiptholders, the commissioner may order the surety to deposit the penal sum of the bond, or so much of the sum as may be deemed necessary, into the trustee's trust account pending a final determination of the surety's liability under the bond.

#### **4.1-58-48. Notice to receiptholders and credit-sale contract claimants.**

1. Upon the commissioner's appointment, the commissioner may take possession of relevant books and records of the warehouseman.
2. The commissioner shall cause a notice of the commissioner's appointment to be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located and may notify by ordinary mail the holders of record of outstanding receipts and those that are potential credit-sale contract claimants, as shown by the warehouseman's records.
3. The notices must require outstanding receiptholders and credit-sale contract claimants to file claims against the warehouseman with the commissioner along with the receipts, contracts, or any other evidence of the claims as required by the commissioner.
4. If an outstanding receiptholder or credit-sale contract claimant fails to submit a claim within forty-five days after the last publication of the notice or a longer time as prescribed by the commissioner, the commissioner is relieved of further duty or action under this chapter on behalf of the receiptholder or credit-sale contract claimant and the receiptholder or credit-sale contract claimant may be barred from payment for any amount due.
5. Outstanding receiptholders and credit-sale contract claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

#### **4.1-58-49. Remedy of receiptholders.**

A receiptholder does not have a separate claim for relief upon the warehouseman's bond, for insurance, against any person converting grain, nor against any other receiptholder, except through the trustee, unless, upon demand of five or more receiptholders, the commissioner fails or refuses to apply for the commissioner's own appointment. This chapter does not prohibit or prevent a receiptholder, either individually or with other receiptholders, from pursuing concurrently other remedies against the person or property of the warehouseman, for the whole, or any deficiency occurring in the redemption, of the receipts.

#### **4.1-58-50. Commissioner to marshal trust assets.**

Upon the commissioner's appointment, the commissioner may maintain suits at law or in equity, or any special proceeding, in the name of this state, upon the commissioner's own relation, but for the benefit of all receiptholders against: the insurers of grain; the warehouseman's bond; a person that may have converted any grain; or a receiptholder that received more than the receiptholder's just and pro rata share of grain, for the purpose of marshalling all trust fund assets and distributing the same among the receiptholders. The commissioner shall seek possession of any grain in the warehouse before recourse is had against the insurers of grain, and the remedy against the insurers of grain must be exhausted before recourse is had against the bond, and against the bond before recourse is had against the person honestly converting grain, unless the commissioner deems it necessary to the redemption of the receipts that all the above remedies be pursued at the same time.

#### **4.1-58-51. Power of commissioner to prosecute or compromise claims.**

The commissioner may:

1. Prosecute an action provided in this chapter in any court in this state or in any other state.
2. Appeal from an adverse judgment to the courts of last resort.
3. Settle and compromise an action if it is in the best interests of the receiptholders.
4. Settle and compromise an action if it is in the best interests of the credit-sale contract claimants.
5. Upon payment of the amount of the compromise or of the full amount of an insurance policy, bond, or conversion claim, exonerate the person so compromising or paying in full from further liability growing out of the action.

#### **4.1-58-52. Commissioner's authority - Warehouseman - Trust assets.**

Upon the commissioner's determination continued operation of a warehouseman is likely to result in probable loss of assets to receiptholders, the commissioner may immediately suspend, close, or take control of the assets held in a trust fund described in section 4.1-58-45, or take any combination of these actions as the commissioner deems necessary to begin an orderly liquidation of those trust fund assets as provided in this chapter.

#### **4.1-58-53. Money received by trustee - Deposited in Bank of North Dakota.**

All moneys collected and received by the commissioner as trustee under this chapter, pending the marshalling of the fund, must be deposited in the Bank of North Dakota.

#### **4.1-58-54. Report of trustee - Approval - Distribution.**

1. Upon the receipt and evaluation of claims, the commissioner shall file a report showing the amount and validity of each claim after recognizing relevant:
  - a. Liens or pledges;
  - b. Assignments;
  - c. Deductions due to advances or offsets accrued for the licensee;
  - d. Cash claims or checks;
  - e. Credit-sale contracts or noncredit-sale contract; and
  - f. The amount remaining to be paid based on the terms of the contract.
2. The report also must contain the proposed reimbursement to the commissioner for the expenses of administering the insolvency, the proposed distribution of the trust fund assets to receiptholders, less expenses incurred by the commissioner in the administration of the insolvency, and the proposed credit-sale contract indemnity fund payments to credit-sale contract claimants. If the trust fund is insufficient to redeem all receiptholder claims in full, the report should list the funds as prorated.

3. The commissioner shall set a hearing and the appropriate notice for interested persons to show cause why the commissioner's report should not be approved and distribution of the trust fund be made as proposed. Copies of the report and notice of hearing must be served by the commissioner by certified mail upon the licensee and the surety and by ordinary mail upon all persons having claims filed with the commissioner.
4. An aggrieved person having an objection to the commissioner's report shall file the objection with the commissioner and serve copies on the commissioner, the licensee, and the surety at least twenty days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.
5. Following the hearing, the commissioner shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, payments from the credit-sale contract indemnity fund, and discharge of the commissioner from the commissioner's trust.
6. If an aggrieved person still has objection with the commissioner's report after hearing the person may appeal to district court.

#### **4.1-58-55. Filing fees and court costs - Expenses.**

1. In any action in a state court in this state, the commissioner may not be required to pay any filing fee or other court costs or disbursements if the fees accrue to the county or to the state.
2. The attorney general may employ outside legal services to assist the commissioner in the prosecution of such action as in the attorney general's judgment may be necessary and the commissioner shall deduct the expenses of the legal services from the trust fund and the credit-sale contract indemnity fund as appropriate.
3. All other necessary expenses incurred by the commissioner in carrying out this chapter, including adequate insurance to protect the commissioner, the commissioner's employees, and others engaged in carrying out this chapter, must be reimbursed to the commissioner from the trust fund and credit-sale indemnity funds as appropriate.

#### **4.1-58-56. Violations of chapter - Criminal penalty - Civil penalty.**

1. A person violating a provision of this chapter or a rule adopted pursuant to this chapter, if punishment is not specifically provided for, is:
  - a. Guilty of an infraction; and
  - b. Subject to a civil penalty in an amount not to exceed five thousand dollars for each violation.
2. The civil penalty may be adjudicated by the agriculture commissioner through an administrative hearing or by a court in an appeal of an administrative hearing.

<sup>60</sup> **SECTION 2.** Chapter 4.1-59 of the North Dakota Century Code is created and enacted as follows:

**4.1-59-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in section 4.1-59-13. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only that part of the contract is a credit-sale contract.
2. "Deferred-payment contract" means a credit-sale contract for which the amount owed for the sale of grain has been established, but the payment is postponed until a later date.
3. "Facility" means a structure in which grain purchased by a grain buyer is received or held.
4. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown grain or grass seed. "Grain" does not include grain or grass seeds owned by or in the possession of the grain buyer which have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.
5. "Grain broker" means a person that:
  - a. Is involved in the negotiation of grain transactions in the state;
  - b. Receives compensation from at least one party to the transaction; and
  - c. Does not take title to the grain and is not under any financial or contractual obligation related to the transaction.
6. "Grain buyer" means a person, other than a public warehouseman as defined in chapter 4.1-58, which purchases or otherwise merchandises grain for compensation. The term includes a roving grain buyer, grain broker, and grain processor. The term does not include:
  - a. A producer of grain that purchases grain from other grain producers to complete a carload or truckload in which the greater portion of the load is grain grown by the purchasing producer or used by the purchasing producer for on-farm feedlot operations in which at least fifty percent of the livestock is owned by the owner of the farm.
  - b. A person permitted to sell seed under chapter 4.1-53, if that person buys grain only for processing and subsequent resale as seed.

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<sup>60</sup> Section 4.1-59-09 was amended by section 13 of Senate Bill No. 2096, chapter 80.

- c. A person that is an authorized dealer or agent of a seed company holding a permit in accordance with section 4.1-53-38.
7. "Grain processor" means an entity that purchases grain to process into end products of a substantially different makeup or nature than the original grain.
8. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.
9. "Receipts" means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when the memoranda was received as a result of a credit-sale contract.
10. "Roving grain buyer" means a grain buyer that does not operate a facility where grain is received.

#### **4.1-59-02. Duties of the commissioner.**

The commissioner shall:

1. Exercise general supervision of grain buyers of this state.
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.
3. Examine and inspect, during ordinary business hours, any books, documents, and records.
4. Make all proper rules for carrying out and enforcing any law in this state regarding grain buyers.

#### **4.1-59-03. Commissioner's authority - Grain buyer - Trust assets.**

Upon the commissioner's determination continued operation of a grain buyer is likely to result in probable loss of assets to receiptholders, the commissioner may immediately suspend, close, or take control of the assets held in a trust fund described in section 4.1-59-22, or take any combination of these actions as the commissioner deems necessary to begin an orderly liquidation of those trust fund assets as provided in this chapter.

#### **4.1-59-04. Federal licensed inspector and employees.**

The commissioner may employ a federal licensed inspector and other employees as necessary to carry out this chapter.

#### **4.1-59-05. Grain marketing - Procedure for resolving disputes.**

1. If a dispute or disagreement arises between the person receiving and the person delivering grain as to the proper grade, dockage, vomitoxin level, moisture content, or protein content of any grain, an average sample of at least three pints [1.65 liters] of the grain in dispute may be taken together by both interested parties.
  - a. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was transferred.

- b. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties for inspection by a federal licensed inspector, or a mutually agreed-upon third party, that may examine the grain and adjudge what grade, dockage, vomitoxin level, moisture content, or protein content the sample of grain is entitled to under the inspection rules and grades adopted by the secretary of agriculture of the United States.
  - c. The person requesting the inspection service shall pay for the inspection.
  - d. If the grain in question is damp, otherwise out of condition, or if moisture content is in dispute, the sample must be placed in an airtight container.
  - e. Payment for the grain involved in the dispute must be made and accepted on the basis of the determination made by the federal licensed inspector or third party. All quality factors also may be considered in determining the price of the grain.
  - f. An appeal of the determination made by a third party other than a federal licensed inspector may be made to a federal licensed inspector.
  - g. An appeal of the determination made by a federal licensed inspector may be made as provided under the United States Grain Standards Act [Pub. L. 103-354; 108 Stat. 3237; 7 U.S.C. 79(c) and (d)] and under 7 CFR 800.125-800.140.
  - h. A person not abiding by a final determination is liable for damage resulting from not abiding by the determination.
2. If a dispute or disagreement arises between the person delivering grain and the person receiving grain as to the determination of quality factors of grain purchased or delivered in the state for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States, an average sample of at least three pints [1.65 liters] of the grain in dispute may be taken together by the interested parties.
- a. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was transferred.
  - b. If the grain is damp or otherwise out of condition, the sample must be placed in an airtight container.
  - c. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties, for inspection by a federal licensed inspector, or a mutually agreed-upon third party, that may examine the grain and determine the quality factors in dispute.
  - d. The person requesting the inspection service shall pay for the inspection.
  - e. The determination made by the inspector, or the third party, must be used in the settlement of the dispute.

#### **4.1-59-06. Release of records - Confidentiality.**

1. As a condition of licensure, an applicant shall agree to provide the commissioner, upon request, any financial record the commissioner deems relevant for purposes related to:
  - a. The issuance or renewal of a grain buyer license; or
  - b. An investigation after issuance or renewal of a grain buyer license.
2. As a condition of licensure, an applicant shall file a records release with the commissioner, authorizing the commissioner to obtain from any source any financial record the commissioner deems relevant for purposes related to:
  - a. The issuance or renewal of a grain buyer license; or
  - b. An investigation after issuance or renewal of a grain buyer license.
3. Information obtained by the commissioner under this section is confidential and may be provided only:
  - a. To federal authorities in accordance with federal law;
  - b. To the attorney general, state agencies, and law enforcement agencies for use in the pursuit of official duties; and
  - c. As directed by an order of a court pursuant to a showing of good cause.

#### **4.1-59-07. Grain buyer license - Financial criteria to be met.**

1. To be eligible to receive an annual license, an applicant shall submit financial documentation to the commissioner verifying the applicant has satisfactory net worth and working capital, as determined by the commissioner.
2. A licensed grain buyer or an applicant for initial licensure shall report balance sheets and income statements to the commissioner annually on written application for initial licensure or license renewal if the applicant purchased up to ten million dollars worth of grain during the previous licensing period, or intends to purchase up to ten million dollars worth of grain during the first year of operation.
3. As a condition of licensure, an applicant shall provide to the commissioner, upon request, any financial record or bank verification release the commissioner deems relevant for the purpose of verifying the financial information of an applicant under this section.
4. As a condition of licensure, a new applicant must:
  - a. Pass a background check;
  - b. Have a satisfactory credit score, as determined by the commissioner; and
  - c. Be a responsible person with a good business reputation, as determined by the commissioner, that:
    - (1) Is in the grain buying business;

- (2) Has knowledge of, and experience with, generally accepted grain buying and handling practices;
- (3) Is competent and willing to operate as a grain buyer in accordance with state and federal regulations; and
- (4) Has not committed fraud or a criminal offense indicating a lack of business integrity or honesty that undermines the person's responsibility as a grain buyer.

#### **4.1-59-08. Grain buyer license - How obtained - Fee - Penalty.**

1. Grain buyers that purchase, solicit, merchandise, or take possession of grain in this state shall obtain an annual license from the commissioner. Except as provided in this section, each license expires on July thirty-first of each year. If a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. The annual license fee for a grain buyer is:
  - a. Four hundred dollars for a grain buyer that purchased up to one million dollars worth of grain during the previous licensing period, or intends to purchase up to one million dollars worth of grain during the first year of operation;
  - b. Eight hundred dollars for a grain buyer that purchased more than one million dollars worth of grain but not more than ten million dollars worth of grain during the previous licensing period, or intends to purchase more than one million dollars worth of grain but not more than ten million dollars worth of grain during the first year of operation; and
  - c. One thousand two hundred dollars for a grain buyer that purchased more than ten million dollars worth of grain during the previous licensing period, or intends to purchase more than ten million dollars worth of grain during the first year of operation.
2. A license renewal application received after July fifteenth must be assessed an additional one hundred dollar fee per receiving location.
3. A license issued under this section is not transferable.
4. The commissioner may refuse to issue or renew or may revoke a license:
  - a. If the licensee or applicant has been convicted of a criminal offense;
  - b. If the licensee or applicant has failed to comply with the requirements of this section;
  - c. If the commissioner has evidence the licensee negotiated in bad faith; or
  - d. For any other reason as determined by the commissioner.
5. A licensed grain buyer shall submit a monthly report to the commissioner by the tenth day of each month. The report must include the total value of each commodity brokered in the preceding month.

6. A licensed grain buyer shall notify each potential commodity seller of the identity of the potential commodity buyer before the final confirmation of the transaction.
7. Before a license is effective for a grain buyer, the licensee or applicant shall file a bond with the commissioner for not less than one hundred thousand dollars.
8. A grain buyer must have the buyer's license in possession at all times.
9. A grain buyer that transacts business without first procuring a license and giving a bond is guilty of a class B misdemeanor.

#### **4.1-59-09. Bond filed by grain buyer.**

1. Before a license is effective for a grain buyer under this chapter, the applicant for the license shall file a bond with the commissioner which must:
  - a. Be in a sum not less than one hundred thousand dollars.
  - b. Be continuous, unless the corporate surety by certified mail notifies the licensee and the commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.
  - c. Run to this state for the benefit of all persons selling grain to or through the grain buyer.
  - d. Be conditioned:
    - (1) For the faithful performance of the licensee's duties as a grain buyer.
    - (2) For compliance with the provisions of law and the rules of the commissioner relating to the purchase of grain by the commissioner monthly.
2. The surety on the bond must be a corporate surety company, approved by the commissioner and authorized to do business within the state. The commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in the commissioner's judgment, cash, a negotiable instrument, or a personal surety bond properly will protect the holders of outstanding receipts.

#### **4.1-59-10. Bond discount.**

1. The licensee may request a bond reduction based upon the licensee's payment policy.
  - a. The required bond is reduced by thirty percent for a licensee that establishes and follows a payment policy approved by the commissioner of ten days or fewer.
  - b. The required bond is reduced by fifteen percent for a licensee that establishes and follows a payment policy approved by the commissioner of eleven to twenty-one days.

2. A reduction under this section may not be used to reduce required bond below the minimum bond set by law.

#### **4.1-59-11. Bond cancellation - Release of surety.**

The surety on a bond is released from all future liability accruing on the bond after the expiration of ninety days from the date of receipt by the commissioner of notice of cancellation by the surety or on a later date specified by the surety. This provision does not operate to relieve, release, or discharge the surety from any liability already accrued or which accrues before the expiration of the ninety-day period. Unless the grain buyer files a new bond at least thirty days before liability ceases, the commissioner, without hearing, immediately shall suspend the grain buyer's license and the suspension may not be removed until a new bond has been filed and approved by the commissioner.

#### **4.1-59-12. Revocation and suspension.**

The commissioner may suspend or revoke the license of a grain buyer for cause upon notice and hearing. Notwithstanding any other provision of this chapter, the commissioner shall suspend the license of a grain buyer for failure at any time to maintain a bond.

#### **4.1-59-13. Scale ticket - Contents.**

Every grain buyer, upon receiving grain, shall issue a uniform scale ticket or comparable receipt for each load of grain received. Receipts must be numbered consecutively and one copy of each receipt must be retained and remain as a permanent record. The original receipt must be delivered to the person from which the grain is received, upon each load of grain.

#### **4.1-59-14. Credit-sale contracts.**

1. 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 when 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 include:
  - a. The seller's name and address.
  - b. The conditions of delivery.
  - c. The amount and kind of grain delivered.
  - d. The price per unit or basis of value.
  - e. The date payment is to be made.
  - f. The duration of the credit-sale contract.
  - g. Notice in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section 4.1-59-09. However, if the grain buyer has obtained bond coverage in addition to that required by section 4.1-59-09 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 the coverage.

2. The contract must be signed by both parties and executed in duplicate. An electronic signature satisfies this requirement. A holder of an unsigned contract is not eligible for any protection provided by chapter 4.1-62. The grain buyer shall retain one copy and deliver one copy 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.
3. A buyer that offers deferred-payment contracts shall inform producers of bond protection.

#### **4.1-59-15. Discrimination by grain buyer prohibited.**

1. A grain buyer may not discriminate:
  - a. In the buying, selling, receiving, and handling of grain or in the charges made or the service rendered to owners of purchased grain;
  - b. In the receiving of grain offered for sale, but this chapter does not require a processor to receive or purchase any lot or kinds of grain;
  - c. In regard to the persons offering grain for sale; or
  - d. Between points or stations except as the marketing factors or transportation costs or grain quality premiums may warrant.
2. A grain buyer is not required to receive any grain that is heating or otherwise out of condition.

#### **4.1-59-16. Records required to be kept by grain buyers.**

A grain buyer shall keep such accounts, records, and memoranda concerning the buyer's dealing as the grain buyer as may be required by the commissioner and shall make any reports of purchases of grain as may be required by the rules adopted by the commissioner. The commissioner at all times must have access to the accounts, records, and memoranda.

#### **4.1-59-17. Reports to be made by grain buyers - Penalty for failure - Confidential records.**

1. Each licensed and bonded grain buyer shall:
  - a. Prepare for each month a report giving facts and information called for on the form of report prepared by the commissioner.
    - (1) The report must contain or be verified by a written declaration the report is made under the penalties of perjury.
    - (2) The report may be called for more frequently if the commissioner deems necessary.
    - (3) Information pertaining to the value of grain handled is a confidential trade secret and is not a public record. The commissioner may make

this information available for use by other governmental entities, but the information may not be released by those entities in a manner that jeopardizes the confidentiality of individual licensees.

- b. File the report with the commissioner not later than the last day of the following month. Failure to file this report promptly is cause for revoking the grain buyer license after due notice and hearing.
  - c. Keep a separate account of the grain business. If the grain buyer is engaged in handling or selling any other commodity, the grain account and other accounts may not be mixed.
  - d. Submit additional information requested by the commissioner pursuant to a report or an inspection within five business days.
2. The commissioner may refuse to renew a license to any grain buyer that fails to make a required report.

#### **4.1-59-18. Standard weights to be used - Exception.**

A person purchasing grain may not use any measure for the grain other than the standard bushel, and a number of pounds may not be used or called a bushel other than the number of pounds provided by law as the standard weight of the kind of grain in question, except that during the months of October and November, not exceeding eighty-two pounds [37.19 kilograms], and during the months of December and January, not exceeding seventy-six pounds [34.47 kilograms], may be used as the standard weight per bushel of new ear corn.

#### **4.1-59-19. Federal grades to control - Grades to be posted.**

1. A grain buyer shall purchase grain, except dry edible beans, in accordance with the official grades established by the secretary of agriculture of the United States, except as otherwise provided in applicable rules and regulations adopted by federal officials pursuant to law.
2. A grain buyer of dry edible beans shall purchase and deliver beans in accordance with the buyer's policy, which must be filed with the commissioner and, if applicable, posted in a conspicuous place in the buyer's facility.
3. Other grading standards may be used if mutually agreed to in writing by the grain buyer and the owner of the grain. However, the owner may demand the use of federal grading standards.
4. After hearing, the commissioner may prohibit the use of nonfederal grades.

#### **4.1-59-20. Grading of grain - Penalty.**

A grain buyer, before testing for grade any grain handled by the grain buyer, shall remove and make due allowance for any dockage of the grain made by reason of the presence of straw, weed seeds, dirt, or any other foreign matter. A grain buyer that violates this provision is guilty of a class B misdemeanor.

#### **4.1-59-21. Insolvency of grain buyer.**

A licensee is insolvent when the licensee refuses, neglects, or is unable upon proper written demand, including electronic communication, to pay for grain

purchased or marketed by the licensee or is unable to make redelivery upon proper written demand, including electronic communication. The licensee may not assess receiving or redelivery fees on grain.

#### **4.1-59-22. Trust fund established - Trustee.**

1. Upon the insolvency of a licensee, a trust fund must be established for the benefit of noncredit-sale receiptholders and to pay the costs incurred by the commissioner in the administration of the insolvency. The trust fund consists of the following:
  - a. Nonwarehouse receipt grain of the insolvent licensee held in storage or the proceeds obtained from the conversion of the grain.
  - b. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the commissioner is appointed trustee must be remitted to the commissioner and included in the trust fund.
  - c. The proceeds of insurance policies on destroyed grain.
  - d. The claims for relief, and proceeds from the claims for relief, for damages upon bond given by the licensee to ensure faithful performance of the duties of a licensee.
  - e. The claim for relief, and proceeds from the claim for relief, for the conversion of any grain stored in the warehouse.
  - f. Unencumbered accounts receivable for grain sold before the filing of the claim that precipitated an insolvency.
  - g. Unencumbered equity in grain hedging accounts.
  - h. Unencumbered grain product assets.
2. Upon the insolvency of a grain buyer, the commissioner shall act as trustee of the trust fund.
3. All funds received by the commissioner as trustee must be deposited in the Bank of North Dakota.

#### **4.1-59-23. Joinder of surety - Deposit of proceeds.**

Each surety on the insolvent licensee's bonds must be joined as a party to the insolvency proceeding. If it is in the best interests of the receiptholders, the court may order a surety to deposit some or all of the penal sum of the bond into the trustee's trust account pending determination of the surety's liability under the bond.

#### **4.1-59-24. Joinder - Grain broker.**

A licensed grain broker may be joined as a party to an insolvency proceeding if the commissioner determines the grain broker negotiated a grain transaction with an insolvent grain buyer or which was discriminatory, predatory, or in bad faith.

#### **4.1-59-25. Notice to receiptholders and credit-sale contract claimants.**

1. Upon the commissioner's appointment, the commissioner may take possession of relevant books and records of the licensee.
2. If the insolvency involves a roving grain buyer, the commissioner shall publish a notice of the commissioner's appointment once each week for two consecutive weeks in all daily newspapers in the state and may notify, by ordinary mail, the holders of record of outstanding receipts and those that are potential credit-sale contract claimants, disclosed by the licensee's records.
3. If the insolvency involves a grain processor, the notice must be published once each week for two consecutive weeks in a newspaper in the county in which the facility is located.
4. The notice must require outstanding receiptholders and credit-sale contract claimants to file claims with the commissioner along with the receipts, contracts, or other evidence of the claims required by the commissioner.
5. If an outstanding receiptholder or credit-sale contract claimant fails to submit a claim within forty-five days after the last publication of the notice or a longer time set by the commissioner, the commissioner is relieved of further duty in the administration of the insolvency on behalf of the receiptholder or credit-sale contract claimant and the receiptholder may be barred from participation in the trust fund, and the credit-sale contract claimant may be barred from payment for any amount due.
6. Outstanding receiptholders and credit-sale contract claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

#### **4.1-59-26. Remedy of receiptholders.**

A receiptholder does not have a separate claim for relief upon any insolvent licensee's bond, for insurance, against any person converting grain, nor against any other receiptholder, except through the trustee, unless, upon demand of five or more receiptholders, the commissioner fails or refuses to apply for the commissioner's own appointment or unless the district court denies the application. This chapter does not prohibit a receiptholder, either individually or with other receiptholders, from pursuing concurrently any other remedy against the person or property of the licensee.

#### **4.1-59-27. Commissioner to marshal trust assets.**

Upon the commissioner's appointment, the commissioner shall marshal all trust fund assets. The commissioner may maintain suits in the name of the state of North Dakota for the benefit of all receiptholders against the licensee's bonds, insurers of grain, any person that may have converted any grain, and any person that may have received preferential treatment by being paid by the insolvent licensee after the first default.

#### **4.1-59-28. Power of commissioner to prosecute or compromise claims.**

The commissioner may:

1. Prosecute an action provided in sections 4.1-59-21 through 4.1-59-31 in any court in this state or in any other state.
2. Appeal from an adverse judgment to the courts of last resort.

3. Settle and compromise an action if it will be in the best interests of the receiptholders.
4. Settle and compromise an action if it is in the best interests of the credit-sale contract claimants.
5. Upon payment of the amount of any settlement or of the full amount of any bond, exonerate the person so paying from further liability growing out of the action.

#### **4.1-59-29. Report of trustee - Approval - Distribution.**

1. Upon the receipt and evaluation of claims, the commissioner shall file a report showing the amount and validity of each claim after recognizing:
  - a. Relevant liens or pledges.
  - b. Relevant assignments.
  - c. Relevant deductions due to advances or offsets accrued in favor of the licensee.
  - d. Relevant cash claims or checks, the amount of the claim.
  - e. Relevant credit-sale contract or noncredit-sale contract, the amount remaining to be paid based on the terms of the contract.
2. The report also must contain the proposed reimbursement to the commissioner for the expenses of administering the insolvency, the proposed distribution of the trust fund assets to receiptholders, less expenses incurred by the commissioner in the administration of the insolvency, and the proposed credit-sale contract indemnity fund payments to credit-sale contract claimants. If the trust fund is insufficient to redeem all receiptholder claims in full, the report must list the funds as prorated.
3. The commissioner shall set a hearing and the appropriate notice for interested persons to show cause why the commissioner's report should not be approved and distribution of the trust fund be made as proposed. The commissioner shall serve copies of the report and notice of hearing by certified mail upon the licensee and the surety and by ordinary mail upon all persons having claims filed with the commissioner.
4. An aggrieved person having an objection to the commissioner's report shall file the objection with the commissioner and serve copies on the commissioner, the licensee, and the surety at least twenty days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.
5. Following the hearing, the commissioner shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, payments from the credit-sale contract indemnity fund, and discharge of the commissioner from the commissioner's trust.
6. If an aggrieved person still has objection with commissioner's report after hearing the person may appeal to district court.

**4.1-59-30. Filing fees and court costs - Expenses.**

1. The commissioner may not be required to pay any filing fee or other court costs or disbursements.
2. The attorney general may appoint outside legal counsel to assist the commissioner in the prosecution of the action and the cost of employing outside counsel must be paid from the trust fund and the credit-sale contract indemnity fund as appropriate.
3. All other necessary expenses incurred by the commissioner in carrying out this chapter, including adequate insurance to protect the commissioner, the commissioner's employees, and others engaged in carrying out sections 4.1-59-21 through 4.1-59-31, must be reimbursed to the commissioner from the trust fund and credit-sale contract indemnity funds as appropriate.

**4.1-59-31. Cease and desist.**

If a person engages in an activity or practice contrary to the provisions of this chapter or related rules, the commissioner, upon the commissioner's own motion without complaint, with or without hearing, may order the person to cease and desist from the activity until further order of the commissioner. An order may include any corrective action up to and including license suspensions. A cease and desist order must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

**4.1-59-32. Agricultural contracts - Mediation and arbitration.**

If a written contract for the sale of grain does not contain provisions to settle disagreements concerning factors not governed by section 4.1-59-04, the parties shall attempt to resolve the disagreements through mediation or arbitration.

**4.1-59-33. 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, that has been cleaned, processed, and made ready for consumption, from a public warehouseman licensed and bonded under chapter 4.1-58. 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.

**4.1-59-34. Violations of chapter - Criminal penalty - Civil penalty.**

1. A person violating a provision of this chapter or a rule adopted pursuant to this chapter, if punishment is not specifically provided for, is:
  - a. Guilty of an infraction; and
  - b. Subject to a civil penalty in an amount not to exceed five thousand dollars for each violation.
2. The civil penalty may be adjudicated by a court or by the agriculture commissioner through an administrative hearing.

**SECTION 3.** Chapter 4.1-61 of the North Dakota Century Code is created and enacted as follows:

#### **4.1-61-01. Public elevators and warehouses - Commissioner may require uniform accounting system.**

The commissioner may require every association, copartnership, corporation, or limited liability company conducting a public elevator or warehouse in this state to adopt a uniform accounting system established by the commissioner.

#### **4.1-61-02. Examination of financial accounts of elevator or warehouse by competent examiner - Request by percentage of stockholders.**

The commissioner may install, and if requested by not less than fifteen percent of the partners, stockholders, or members of any association, copartnership, corporation, or limited liability company conducting the public elevator or warehouse, shall install, the uniform system of accounting provided for in section 4.1-61-01. The commissioner on the commissioner's own motion may, or on request of the required percentage of partners, stockholders, or members, the commissioner shall, send a competent examiner to examine the books and financial accounts of the elevator or warehouse. If a request for the examination of the accounts of any association, copartnership, corporation, or limited liability company has been made to the commissioner, as provided for in this section, subsequent examinations must be made at least once every year until the commissioner is requested to discontinue the examination by resolution adopted by the partners, stockholders, or members at any annual meeting. If the examination has been made, the examiner shall report immediately the results of the examination to the president and the secretary of the association, copartnership, corporation, or limited liability company and to the commissioner.

#### **4.1-61-03. Certificate issued by commissioner after examination of accounts.**

1. If the commissioner is satisfied from the commissioner's examination that the association, copartnership, corporation, or limited liability company examined is solvent and the method of doing business is likely to be beneficial to all its members or persons interested therein, the commissioner shall issue a certificate, countersigned by the examiner, to the agent or manager. The certificate must be kept posted conspicuously in the warehouse or elevator of the association, copartnership, corporation, or limited liability company and must state:
  - a. That the methods of doing business are sound.
  - b. That the association, copartnership, corporation, or limited liability company is solvent.
  - c. That its books and accounts are kept properly.
2. If the affairs and methods of doing business of the association, copartnership, corporation, or limited liability company do not seem sound or satisfactory to the commissioner, the commissioner shall issue a certificate or statement, countersigned by the person that made the examination, stating in what particular and in what respect the business methods practiced or methods of keeping books and accounts of the association, copartnership, corporation, or limited liability company are not deemed safe. The commissioner shall mail a copy of the statement or certificate to each of the shareholders or stockholders as may have requested the commissioner to make the examination. The commissioner also shall send a copy to the president and

the secretary of the association, copartnership, corporation, or limited liability company.

#### **4.1-61-04. Fees of examiner for installing and examining accounting system.**

For installing a uniform accounting system and examining the financial accounts of an elevator or public warehouse, an association, copartnership, corporation, or limited liability company shall pay the examiner a reasonable fee, as determined by the commissioner. If an association, copartnership, corporation, or limited liability company wrongfully refuses or neglects to pay the fees, the commissioner may cancel the license to do business. All fees must be paid into the state treasury. The expenses incurred by the examiner under this chapter must be paid out of the appropriations made by the legislative assembly for this purpose and the expenses must be audited and paid in the same manner as other expenses are audited and paid.

**SECTION 4.** Chapter 4.1-62 of the North Dakota Century Code is created and enacted as follows:

#### **4.1-62-01. Credit-sale contracts - Assessment on grain - Submission of assessment.**

An assessment at the rate of two-tenths of one percent is placed on the value of all grain sold in this state under a credit-sale contract, as provided for in sections 4.1-58-17 and 4.1-59-13. The licensee purchasing the grain shall note the assessment on the contract required under sections 4.1-58-21 and 4.1-59-14 and shall deduct the assessment from the purchase price payable to the seller. The licensee shall submit any assessment collected under this section to the commissioner no later than thirty days after each calendar quarter. The commissioner shall deposit the assessments received under this section in the credit-sale contract indemnity fund.

#### **4.1-62-02. Credit-sale contract indemnity fund - Creation - Continuing appropriation.**

There is created in the state treasury the credit-sale contract indemnity fund. The state treasurer shall invest available moneys in the fund in accordance with section 21-10-07 and in cooperation with the commissioner shall deposit any income earned through the investments into the fund. The fund and earnings of the fund are appropriated to the commissioner on a continuing basis to be used exclusively to carry out the intent and purpose of this chapter.

#### **4.1-62-03. Credit-sale contract indemnity fund - Suspension of assessment.**

At the end of the calendar quarter in which the credit-sale contract indemnity fund reaches a level of six million dollars, the commissioner shall suspend collection of the assessment required by this chapter. If after suspension of collection the balance in the fund is less than three million dollars, the commissioner shall require collection of the assessment.

#### **4.1-62-04. Credit-sale contract indemnity fund - Eligibility for reimbursement.**

A person is eligible to receive indemnity payments from the credit-sale contract indemnity fund if:

1. After August 1, 2003, the person sold grain to a licensed warehouse or a grain buyer in this state under a credit-sale contract;
2. The licensed warehouse to which the person sold grain or the grain buyer to which the person sold grain becomes insolvent; and
3. The licensed warehouse or the grain buyer, as a result of the insolvency, does not fully compensate the person in accordance with the credit-sale contract.

#### **4.1-62-05. Credit-sale contract indemnity fund - Availability of money.**

Upon the insolvency of a licensed warehouse or a grain buyer and a declaration the commissioner serve as the trustee, the commissioner shall make the proceeds of the credit-sale contract indemnity fund available for use in meeting the licensee's obligations with respect to the reimbursement of a person that sold grain to the licensee under a credit-sale contract and who was not fully compensated in accordance with the contract.

#### **4.1-62-06. Credit-sale contract indemnity fund - Reimbursement limit.**

The amount payable to an eligible person from the credit-sale contract indemnity fund for each insolvency may not exceed the lesser of eighty percent of the amount owed to that eligible person in accordance with all of that person's unsatisfied credit-sale contracts or two hundred eighty thousand dollars.

#### **4.1-62-07. Credit-sale contract indemnity fund - Prorated claims.**

If claims for indemnity payments from the credit-sale contract indemnity fund exceed the amount in the fund, the commissioner shall prorate the claims and pay the prorated amounts. As future assessments are collected, the commissioner shall continue to forward indemnity payments to each eligible person until the person receives the maximum amount payable in accordance with this chapter.

#### **4.1-62-08. Reimbursement for later insolvencies.**

The commissioner shall ensure all persons eligible for payment from the indemnity fund as a result of an insolvency are fully compensated to the extent permitted by this chapter before any payments from the indemnity fund are initiated as a result of a later insolvency. The chronological order of insolvencies is determined by the date the commissioner is appointed trustee under section 4.1-58-40 or 4.1-59-21.

#### **4.1-62-09. Credit-sale contract indemnity fund - Reimbursement for administrative expenses.**

Any expense incurred by the commissioner in administrating the credit-sale contract indemnity must be reimbursed from the fund before any other claim for indemnity is paid.

#### **4.1-62-10. Credit-sale contract indemnity fund assessment - Failure to collect assessment - Penalty.**

A person that knowingly or intentionally refuses or fails to collect the assessment required under this chapter from producers or to submit any assessment collected from producers to the commissioner for deposit in the credit-sale contract indemnity fund is guilty of a class A misdemeanor.

#### **4.1-62-11. Revocation and suspension.**

The commissioner may suspend or revoke the license of a licensee for cause upon notice and hearing for violation of this chapter.

#### **4.1-62-12. Cease and desist.**

If a person engages in an activity or practice contrary to this chapter or rules adopted by the commissioner, the commissioner, upon the commissioner's own motion without complaint and with or without a hearing, may order the person to cease and desist from the activity until further order of the commissioner. The order may include any corrective action up to and including license suspension. A cease and desist order must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

#### **4.1-62-13. Claims.**

A claim concerning a grain buyer must be administered in a manner consistent with chapter 4.1-59. A claim concerning a state licensed grain warehouse must be administered in a manner consistent with chapter 4.1-58. A payment may not be made from the credit-sale contract indemnity fund for a claim based on losses resulting from the sale of grain to a person not licensed under chapter 4.1-58, chapter 4.1-59, or the United States Warehouse Act [Pub. L. 106-472; 114 Stat. 2061; 7 U.S.C. 241 et seq.].

#### **4.1-62-14. Subrogation.**

Money paid from the credit-sale contract indemnity fund in satisfaction of a valid claim constitutes a debt obligation of the person against which the claim was made. The commissioner may take action on behalf of the fund against a person to recover the amount of payment made, plus costs and attorney's fees. Recovery for reimbursement to the fund must include interest computed at the weight average prime rate charged by the Bank of North Dakota. Upon payment of a claim from the credit-sale contract indemnity fund, the claimant shall subrogate the interest of the claimant, if any, to the commissioner in a cause of action against all parties, to the amount of the loss that the claimant was reimbursed by the fund.

#### **4.1-62-15. Roving grain buyers - Exception - Applicability of provisions.**

Notwithstanding any other law, this chapter does not apply to a person that purchases, solicits, or merchandises grain, that has been cleaned, processed, and made ready for consumption, from a public warehouseman licensed and bonded under chapter 4.1-58. 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 5. AMENDMENT.** Subsection 4 of section 41-07-10 of the North Dakota Century Code is amended and reenacted as follows:

4. This section does not modify or repeal chapter ~~60-024.1-58~~.

**SECTION 6. AMENDMENT.** Section 51-23-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **51-23-04. Exempt person transactions.**

1. The prohibitions in section 51-23-03 do not apply to any transaction offered by and in which any of the following persons or any employee, officer, or director thereof acting solely in that capacity is the purchaser or seller:

1. a. A person registered with the commodity futures trading commission as a futures commission merchant or as a leverage transaction merchant whose activities require such registration.
2. b. A person registered with the securities and exchange commission as a broker-dealer whose activities require such registration.
3. c. A person affiliated with, and whose obligations and liabilities under the transaction are guaranteed by, a person referred to in ~~subsection 1~~subdivision a or 2b.
4. d. A person who is a member of a contract market designated by the commodity futures trading commission or any clearinghouse thereof.
5. e. A financial institution.
6. f. A person registered under the laws of this state as a securities dealer whose activities require such registration.
7. g. A public warehouseman as defined in section ~~60-02-014.1-58-01.~~
2. The exemption provided by this section does not apply to any transaction or activity which is prohibited by the Commodity Exchange Act or CFTC rule.

**SECTION 7. REPEAL.** Chapters 60-02, 60-02.1, 60-04, 60-05, and 60-10 of the North Dakota Century Code are repealed.

Approved March 29, 2023

Filed March 30, 2023

# ALCOHOLIC BEVERAGES

## CHAPTER 90

### HOUSE BILL NO. 1449

(Representatives Mock, Boschee, Louser, Wagner, Warrey)  
(Senators Kessel, Larsen, Meyer)

AN ACT to amend and reenact subsection 2 of section 5-01-14, section 5-01-19, and subsection 3 of section 5-01-21 of the North Dakota Century Code, relating to event permits for microbrew pubs, domestic distilleries, and brewer taproom licensees, and the domestic farm product requirement for domestic distilleries.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 5-01-14 of the North Dakota Century Code is amended and reenacted as follows:

2. The tax commissioner may issue a special event permit for not more than forty ~~day~~events per calendar year to a microbrew licensee ~~which allows~~allowing the licensee, subject to local ordinance, to give free samples of beer manufactured by the licensee, sell beer manufactured by the licensee, at a ~~designated trade show, convention, festival, fundraiser, or other related special event hosted by a nonprofit organization unaffiliated with the licensee, or a similar event approved by the tax commissioner. This subsection is subject to local ordinances~~off-premises events.

**SECTION 2. AMENDMENT.** Section 5-01-19 of the North Dakota Century Code is amended and reenacted as follows:

#### **5-01-19. Domestic distillery.**

1. The 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 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 [94635 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 eight a.m. 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 tax commissioner may issue special event permits for not more than forty ~~event day~~ events 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 in closed containers, at off-premises events. A domestic distillery may not engage in any wholesaling activities. Except as provided by section 5-01-19.1, 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 or to a retail licensee, 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 3. AMENDMENT.** Subsection 3 of section 5-01-21 of the North Dakota Century Code is amended and reenacted as follows:

3. The tax commissioner may issue special event permits for not more than forty ~~day~~ events per calendar year to a brewer taproom licensee allowing the licensee, subject to local ordinance, to give free samples of its beer, sell its beer by the glass or in closed containers, or dispense beer manufactured by the licensee, ~~at a designated trade show, convention, festival, fundraiser or other related special event hosted by a nonprofit organization unaffiliated with the brewer taproom licensee, or a similar event approved by the tax commissioner~~ off-premises events.

Approved March 20, 2023

Filed March 21, 2023

## CHAPTER 91

### SENATE BILL NO. 2363

(Senators Barta, Kessel, Meyer)  
(Representatives Cory, Louser, Richter)

AN ACT to amend and reenact subsection 3 of section 5-02-06 of the North Dakota Century Code, relating to prohibitions on access to a brewer taproom for an individual under twenty-one years of age; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 5-02-06 of the North Dakota Century Code is amended and reenacted as follows:

3. a. At the discretion of the owner of the licensed premises, an individual under twenty-one years of age may be permitted to enter and remain in a restaurant where alcoholic beverages are being sold and in the area of the restaurant designated for the opening or mixing of alcoholic beverages if the individual:
  - (1) Is accompanied by a parent or guardian;
  - (2) Is not seated at or within three feet [0.91 meters] of the bar counter; and
  - (3) Does not enter or remain in the designated area after ten p.m.
- b. At the discretion of the owner of a brewer taproom licensed under section 5-01-21, an individual under twenty-one years of age may be permitted to enter and remain in the brewer taproom if:
  - (1) The brewer taproom is connected to or contracts with an establishment, including a mobile food unit, at which food is prepared and available for purchase to be consumed in the brewer taproom and which is connected to or located at the brewer taproom and receives the majority of its gross sales from the sale of food; and
  - (2) The individual:
    - (a) Is accompanied by the individual's parent or guardian;
    - (b) Is not seated at or within three feet [0.91 meters] of the bar counter; and
    - (c) Does not enter or remain in the brewer taproom after ten p.m. or during any time that food is not available for consumption as provided in paragraph 1.
- c. An individual under twenty-one years of age may be permitted to remain in a restaurant where alcoholic beverages are being sold if the restaurant is separated from the designated area 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 years of age or older and is not engaged in the sale, dispensing, delivery, or consumption of alcoholic beverages.

- d. For purposes of this subsection, "mobile food unit" means a vehicle-mounted food service establishment designed to be readily movable from which a vendor prepares, cooks, sells, or serves food or beverages for immediate consumption.

Approved April 4, 2023

Filed April 5, 2023

# BANKS AND BANKING

## CHAPTER 92

### HOUSE BILL NO. 1487

(Representatives Koppelman, Hauck, Heinert, Kasper, Louser, Novak, Tveit)  
(Senators Larsen, Magrum, Wobbema)

AN ACT to create and enact a new chapter to title 6 of the North Dakota Century Code, relating to financial entities use of merchant codes to track firearm and ammunition-related purchases; to provide a penalty; to provide a continuing appropriation; and to provide for a legislative management study.

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

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

##### **Definitions.**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Customer" means any person engaged in a payment card transaction facilitated or processed by a financial entity.
2. "Disclosure" means the transfer, publication, or distribution of protected financial information to another person for any purpose other than the processing or facilitating of a payment card transaction, or taking any actions related to dispute processing, fraud management, or protecting transaction integrity from concerns related to illegal activities, breach, or cyber risks.
3. "Financial entity" means a person involved in facilitating or processing a payment card transaction, including a bank, acquirer, payment card network, or payment card issuer.
4. "Firearms code" means a merchant category code approved by the international organization for standardization for firearms retailers.
5. "Firearms retailer" means any person physically located in this state engaged in the lawful business of selling or trading firearms or ammunition to be used in firearms.
6. "Government entity" means any state board, commission, agency, bureau, or department, or any political subdivision of the state.
7. "Protected financial information" means any record of sale, purchase, return, or refund involving a payment card which is retrieved, characterized, generated, labeled, sorted, or grouped based on the assignments of a firearms code.

**Merchant codes - Limitations.**

1. Except for those records kept during the regular course of a criminal investigation and prosecution or merchant marketing campaigns, a government entity or any official, agent, or employee of the state, or any other person, may not willfully keep or cause to be kept any list, record, or registry of privately owned firearms or firearm owners.
2. A financial entity or its agent may not require the use of a firearms code in a manner that distinguishes a firearms retailer located in this state from a general merchandise retailer or a sporting goods retailer.
3. A financial entity may not engage in the following discriminatory conduct:
  - a. Declining a lawful payment card transaction based solely on the assignment of a firearms code; or
  - b. Taking any action against a customer which is intended to suppress or track lawful commerce involving firearms or ammunition.
4. Nothing in this section may impair the financial entity's actions related to dispute processing, fraud management, protecting transaction integrity from concerns related to illegal activities, breach, cyber risks, or to comply with state or federal law.

**Investigation of financial entities.**

1. Any person may allege violations under this chapter to the attorney general. The attorney general may investigate alleged violations under this chapter and shall provide a written notice to any person in violation. A person that has received a written notice from the attorney general must cease the use of a firearms code within thirty calendar days.
2. The attorney general may pursue, and a court may order, an injunction against any person if the person fails to cease the use of a firearms code after the expiration of thirty days from receipt of written notice.
3. If a court issues an injunction under this section, the court shall award the attorney general reasonable expenses, including reasonable attorney's fees and costs.
4. If the attorney general finds a financial entity willfully violated this chapter, the attorney general shall assess a fee of ten thousand dollars per transaction. Fees collected under this section must be deposited into the merchant code violation fund. A financial entity desiring to appeal the attorney general's finding of a violation under this chapter may appeal the finding in accordance with chapter 28-32.
5. Information disclosed to a federal government entity is not a defense to any civil action filed under this section, unless the disclosure or action is required by federal law or regulation.

**Merchant code violation fund - Continuing appropriation.**

There is created in the state treasury the merchant code violation fund. The fund consists of all money deposited in the fund under this chapter. Moneys in the fund are

appropriated to the attorney general on a continuing basis for disbursement to individuals harmed by a violation of this chapter, subject to approval by the attorney general, and administrative expenses. An individual harmed by a violation under this chapter may submit a request to the attorney general for a disbursement of five thousand dollars from the fund, and the attorney general shall review all requests for disbursement submitted under this chapter. The attorney general may use money remaining in the fund after disbursements to defray the costs of administering and enforcing this chapter.

**SECTION 2. LEGISLATIVE MANAGEMENT STUDY - RETAILER ADMINISTRATION OF COLLECTING AND REMITTING SALES TAX.** During the 2023-24 interim, the legislative management shall consider studying the cost to North Dakota retailers for the collection, remittance, and filing of North Dakota sales and use tax. The study shall categorize North Dakota merchants into no less than three classes by sales volume and describe any differences in costs related to sales volume. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

Approved April 29, 2023

Filed May 1, 2023

## CHAPTER 93

### SENATE BILL NO. 2092

(Industry and Business Committee)  
(At the request of the Department of Financial Institutions)

AN ACT to create and enact a new section to chapter 6-07.2 of the North Dakota Century Code, relating to voluntary liquidation of credit unions; 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; and to repeal chapter 6-06.1 of the North Dakota Century Code, relating to voluntary liquidation of credit unions.

#### 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, financial institution, or credit union subject to its jurisdiction and upon a financial corporation, financial institution, or credit union involved, an order stating:
  - a. That the current or former officer, director, or employee is engaging, or has engaged, in any of the following conduct:
    - (1) Violating any law, regulation, board order, or written agreement with the board.
    - (2) Engaging or participating in any unsafe or unsound practice.
    - (3) Performing any act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.
  - b. The term of the suspension or removal from employment and participation within the conduct of the affairs of a financial corporation, financial institution, ~~or credit union, or any other entity licensed by the department of financial institutions.~~
2. The order 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 a financial corporation, financial institution, ~~or credit union, or any other entity licensed by the department of financial institutions.~~ 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 order is served upon the current or former officer, director, or employee, ~~or if the order is final.~~ If a hearing is held and the board finds that the record so warrants, ~~and if the board finds that a financial corporation, financial institution, or credit union 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 a final order. ~~The final order~~ suspending or removing the current or former officer, director, or employee is final. The current or former officer or employee may request a termination of the final order after a period of no less than three years.
4. A contested or default suspension or removal order is effective immediately upon serviceissuance on the current or former officer, director, or employee and upon a financial corporation, financial institution, or credit union. A consent order is effective as agreed.
5. Any current or former officer, director, or employee suspended or removed from any position pursuant to this section is not eligible, while under suspension or removal, to be employed or otherwise participate in the affairs of any financial corporation, financial institution, or credit union or any other entity licensed by the department of financial institutions 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, financial institution, or credit union 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 a financial corporation's, financial institution's, or credit union's affairs. The order is effective immediately upon serviceissuance of the order on a financial corporation, financial institution, or credit union 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, conviction or agreement to plea to lesser charges, or similar state order or judgment is entered, the board or commissioner 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.

**SECTION 2.** A new section to chapter 6-07.2 of the North Dakota Century Code is created and enacted as follows:

**Voluntary liquidation of a credit union.**

1. A credit union may go into voluntary liquidation following a vote of the majority of the board of directors and approval by the majority of its members in writing or by a vote in favor of the liquidation by a majority of the members of the credit union at a regular meeting of the members or at a special meeting called for that purpose.
  - a. When authorization for liquidation is to be obtained at a meeting of members:
    - (1) Notice in writing must be given to each member at least ten days before the meeting and the notice must inform members they have the right to vote on the proposed liquidation.

(2) The minutes of the meeting must show the number of members present and the number that voted for and against liquidation.

- b. If approval by a majority of all members is not obtained at the meeting of members, authorization for voluntary liquidation may be obtained by having a majority of members sign a statement in substantially the following form:

We the undersigned members of the \_\_\_\_\_ Credit Union, Charter No. \_\_\_\_\_, hereby request the dissolution of our credit union.

2. The board of directors of a credit union in voluntary liquidation:
- a. Is responsible for conserving the assets, for expediting the liquidation, and for equitably distributing the assets to members.
  - b. Shall determine all persons handling or having access to funds of the credit union are adequately covered by surety bond.
  - c. Shall appoint a custodian for the credit union's records that are to be retained for five years after the charter is canceled.
  - d. May appoint a liquidating agent and delegate part or all of these responsibilities to the agent and may authorize reasonable compensation for the agent's services. A liquidating agent must be adequately bonded for faithful performance of the agent's duties, and the coverage must remain in effect or the discovery period extended for at least four months after the final distribution of assets.
3. The supervisory committee, a certified public accountant hired by the supervisory committee, or if the bylaws do not establish a supervisory committee, a certified public accountant hired by the board of directors, is responsible for making periodic audits of the credit union's records, at least quarterly, during the period of liquidation.
4. Within three days after the decision of the board of directors to submit the question of liquidation to the members, the president shall notify the commissioner and the regional director of the national credit union administration in writing, setting forth in detail:
- a. The reasons for the proposed action;
  - b. The previous month-end balance sheet and income statement; and
  - c. A written plan for the liquidation of assets, payment of creditors, and payment of shares to be completed within one year of the date of membership approval to liquidate.
5. Within three days after the action of the members on the question of liquidation, the president shall notify the commissioner and the regional director of the national credit union administration in writing as to whether a majority of the members approved the proposed liquidation.
6. Within ten days of the decision to liquidate by the board of directors, a notice of the decision must be handed to each member, electronically distributed, or

mailed to the member's last-known address to confirm in writing the shares and deposits held by the member in the credit union and the loans owed by the member to the credit union.

7. Within ten days of the approval of a majority of the members of a credit union of a proposal to liquidate, the board of directors of the credit union shall have prepared and mailed to all creditors a notice of liquidation containing instructions to present claims to the credit union within ninety days for payment. New creditor claims subsequent to this notice which are necessary for the continued operation of the credit union during liquidation must continue to be paid upon authorization of the board of directors or liquidating agent.
8. Immediately upon the decision of the membership to liquidate, the credit union may continue to do all things under the original corporate name of the institution, to sue and be sued, to execute conveyances and other instruments, to take, hold, and own property, and to do all other things as may be necessary to realize upon the institution's remaining assets for the benefit of the institution's members, but not to engage or continue in any new or other business under the institution's charter or otherwise. At the discretion of the board of directors or the liquidating agent, transactions upon membership transactional accounts may continue to be honored up to the federal insurance limit until the accounts are sold or otherwise liquidated.
9. At the commencement of voluntary liquidation of a credit union, the treasurer or agent conducting the liquidation shall file with the commissioner a financial and statistical report and a schedule showing the name, book number or account number, share balance, and loan balance of each member.
10. Credit unions in the process of voluntary liquidation shall file with the commissioner a financial and statistical report as of December thirty-first or within thirty days after such date. Additional reports, as determined by the commissioner to be necessary, must be furnished promptly on written request.
11. When deemed advisable by the commissioner, an examination of the books and records of a credit union may be made before, during, or following completion of voluntary liquidation. The commissioner shall set fees for the examination at an hourly rate sufficient to cover all reasonable expenses of the department of financial institutions associated with the examination. Fees must be collected by the commissioner and deposited in the financial institutions regulatory fund.
12. If at any time during the liquidation of credit union assets, it is found the value of remaining assets will not be sufficient to cover the claims of creditors and shareholders, the board of directors or, if appointed, the liquidating agent shall immediately notify the commissioner and the regional director of the national credit union administration. Further liquidation of credit union assets or distributions to shareholders after notice requires written approval from the commissioner.
13. With the written approval of the commissioner, a partial distribution of the credit union's assets may be made to its members from cash funds available on authorization by its board of directors or by a duly authorized liquidating agent whose appointment specifically includes the authority. Partial distributions cannot exceed the national credit union share insurance limit.

14. When all assets of the credit union have been converted to cash or found to be worthless and all loans and debts owing to it have been collected, sold, or found to be uncollectible and all obligations of the credit union have been paid, with the exception of amounts due its members:
  - a. The books must be closed and the pro rata distribution to members computed. This computation must be based on the total amount in each member's share accounts as of the date the board of directors voted to voluntarily liquidate.
  - b. The amount of gain or loss must be entered in each member's share account and should be entered in the member's passbook or statement of account.
  - c. Promptly, funds must be distributed to each member. The funds must be mailed to such members at their last-known addresses, electronically transmitted to the members designated account, or handed to them in person.
  - d. The passbooks or written confirmations submitted by members to verify balances must be retained with the credit union records.
  - e. Unclaimed share accounts subject to the escheat or abandoned property laws of the state or the state of the members' residence must be paid to the state as required by such laws.
  - f. The commissioner must be promptly notified of the date final distribution of assets to the members is started.
  - g. In the event of a loss on members share accounts, a claim must be submitted by the board of directors or the liquidating agent if appointed, to the national credit union administration, private share insurance if available, and bonding company.
15. Within one hundred twenty days after the final distribution to members is started, the credit union shall furnish to the commissioner's office a schedule of unpaid claims. The board of directors of the credit union or the liquidating agent if appointed shall report money in the account of a member who failed to surrender their passbooks or confirm their balances, final distribution checks not cashed within one hundred twenty days, and any unpaid claims to the unclaimed property division of the board of university and school lands pursuant to chapter 47-30.2.

**SECTION 3. REPEAL.** Chapter 6-06.1 of the North Dakota Century Code is repealed.

Approved April 25, 2023

Filed April 26, 2023

## CHAPTER 94

### SENATE BILL NO. 2242

(Senators Erbele, Wanzek)  
(Representatives Brandenburg, Kempenich, Porter)

AN ACT to create and enact a new section to chapter 6-09 of the North Dakota Century Code, relating to the Bank of North Dakota and the administration of the bulk propane storage tank revolving loan fund; to provide for a transfer; and to provide a continuing appropriation.

#### 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:

#### **Bulk propane storage tank revolving loan fund - Continuing appropriation - Audit and costs of administration.**

1. The bulk propane storage tank revolving loan fund is a special fund in the state treasury from which the Bank of North Dakota shall provide loans to propane retailers to purchase and install storage containers to be used for the bulk storage of propane. The Bank shall administer the propane storage tank revolving loan fund.
2. To be eligible for this loan program, the applicant must be a propane retailer conducting business in the state and submit an application to the Bank which must:
  - a. Detail the proposed project, including the location of the storage container within the state;
  - b. Demonstrate the need and viability of the project; and
  - c. Include financial information as the Bank may determine appropriate.
3. The Bank shall consider the applicant's ability to repay the loan when processing the application and shall issue loans only to applicants that provide reasonable assurance of sufficient future income to repay the loan.
4. A loan provided under this section:
  - a. May not exceed the lesser of five hundred thousand dollars or eighty-five percent of the actual cost of the project;
  - b. Must have an interest rate equal to two percent; and
  - c. Must provide a repayment schedule of no longer than fifteen years.
5. In processing loan applications under this section, the Bank shall calculate the maximum outstanding loan amount per qualified applicant. A qualified

applicant under this section may have a maximum total of five hundred thousand dollars in outstanding loans under this section.

6. The Bank shall deposit in the bulk propane storage tank revolving loan fund all payments of interest and principal paid under loans made from the bulk propane storage tank revolving loan fund. The Bank may use a portion of the interest paid on the outstanding loans as a servicing fee to pay for administrative costs which may not exceed one-half of one percent. All money transferred to the fund, interest upon moneys in the fund, and payments to the fund of principal and interest are appropriated to the Bank on a continuing basis for administrative costs and for loan disbursement according to this section.
7. The Bank may adopt policies and establish guidelines to administer this loan program in accordance with this section and to supplement and leverage funds in the bulk propane storage tank revolving loan fund. Additionally, the Bank may adopt policies allowing participation by local financial institutions.
8. The bulk propane storage tank revolving loan fund must be audited in accordance with section 6-09-29 or shall engage with an independent public auditor to perform the necessary procedure to ensure compliance with section 6-09-29. The cost of the audit and any other actual costs incurred by the Bank on behalf of the fund must be paid from the fund.

**SECTION 2. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO BULK PROPANE STORAGE TANK REVOLVING LOAN FUND - LOANS TO PROPANE RETAILERS.** The office of management and budget shall transfer \$5,000,000 from the strategic investment and improvements fund to the bulk propane storage tank revolving loan fund for use by the Bank of North Dakota to provide loans to propane retailers under section 1 of this Act, for the biennium beginning July 1, 2023, and ending June 30, 2025.

Approved April 20, 2023

Filed April 21, 2023

## CHAPTER 95

### SENATE BILL NO. 2233

(Senators Klein, Bekkedahl, Hogue)  
(Representatives Lefor, Vigesaa)

AN ACT to amend and reenact subsection 3 of section 4.1-01.1-07, subsection 6 of section 6-09-15.5, section 6-09-29, subsection 4 of section 6-09-46.2, subsection 5 of section 6-09-49.2, sections 6-09.8-03, 6-09.13-04, 6-09.14-02, 6-09.15-02, 6-09.16-03, and 6-09.18-05, subsection 6 of section 15.1-36-08, section 17-03-02, and subsection 2 of section 54-63.1-07 of the North Dakota Century Code, relating to the audit of loan programs administered by the Bank of North Dakota.

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

<sup>61</sup> **SECTION 1. AMENDMENT.** Subsection 3 of section 4.1-01.1-07 of the North Dakota Century Code is amended and reenacted as follows:

3. The Bank of North Dakota shall develop policies in consultation with the agriculture diversification and development committee. The Bank shall review loan applications. To be eligible for a loan under this section, an entity shall agree to provide the Bank with information as requested. The Bank may develop policies for loan participation with local financial institutions. The Bank shall deposit in the fund all principal and interest paid on the outstanding loans. The Bank may use a portion of the interest paid as a servicing fee to pay for administrative costs, which may not exceed one-half of one percent of the amount of the outstanding loans. The Bank shall contract with a certified public accounting firm to audit the fund if the fund has any loans. The fund must be audited annually pursuant to section 6-09-29, and the cost of the audit must be paid from the fund.

**SECTION 2. AMENDMENT.** Subsection 6 of section 6-09-15.5 of the North Dakota Century Code is amended and reenacted as follows:

6. ~~The industrial commission shall contract with a certified public accounting firm to audit the fund as necessary. The cost of the audit, The fund must be audited annually pursuant to section 6-09-29, and the cost of the audit and any other actual costs incurred by the Bank on behalf of the fund, must be paid for by the fund.~~

**SECTION 3. AMENDMENT.** Section 6-09-29 of the North Dakota Century Code is amended and reenacted as follows:

#### **6-09-29. Examinations and audit reports.**

1. The state auditor shall contract with an independent certified public accounting firm for an annual audit of the Bank of North Dakota in accordance with generally accepted government auditing standards. ~~The state auditor shall~~

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<sup>61</sup> Section 4.1-01.1-07 was also amended by section 2 of House Bill No. 1276, chapter 75.

~~audit annually or contract for an annual audit of the separate programs and funds administered by the Bank of North Dakota. On request of the state auditor, the industrial commission shall assist the state auditor in the auditing firm selection process, but the selection of the auditing firm is the state auditor's responsibility. The auditor selected shall prepare an audit report that includes financial statements presented in accordance with the audit and accounting guide for banks and savings institutions issued by the American institute of certified public accountants. The auditor also shall prepare audited financial statements for inclusion in the comprehensive annual financial report for the state.~~

2. The separate programs and funds administered by the Bank must be audited annually. The audits may be conducted by the state auditor or an independent certified public accounting firm. The audits of the separate programs and funds administered by the Bank may be combined into one comprehensive audit if combining the audits provides cost savings and efficiencies.
3. The state auditor may conduct performance audits of the Bank of North Dakota, including the separate programs and funds administered by the Bank. The auditor shall report the results of the audit to the industrial commission and to the legislative assembly. The Bank of North Dakota or its separate programs and funds shall pay the costs of the performance audit.
4. The department of financial institutions, through the commissioner, shall examine the Bank of North Dakota at least once each twenty-four months and conduct any investigation of the Bank which may be necessary. The commissioner shall report the examination results, and the results of any necessary investigation, to the industrial commission as soon as practicable and to the legislative assembly. The department of financial institutions shall charge a fee for any examination or investigation at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examinations and investigations provided for by this section.

**SECTION 4. AMENDMENT.** Subsection 4 of section 6-09-46.2 of the North Dakota Century Code is amended and reenacted as follows:

4. Excluding the rebuilders and rebuilders home loans transferred to the fund, the Bank of North Dakota shall deposit in the fund all principal and interest paid on the loans made from the fund. The Bank may deduct from interest payments received on a loan under the program a service fee for administering the fund for the Bank and the originating financial institution. ~~The Bank shall contract with a certified public accounting firm to audit the fund as necessary. The cost of the audit.~~ The fund must be audited annually pursuant to section 6-09-29, and the cost of the audit and any other actual costs incurred by the Bank on behalf of the fund, must be paid by the fund.

**SECTION 5. AMENDMENT.** Subsection 5 of section 6-09-49.2 of the North Dakota Century Code is amended and reenacted as follows:

5. The Bank of North Dakota shall manage and administer loans from the water infrastructure loan fund. The Bank shall deposit in the fund all principal and interest paid on loans made from the fund. Annually, the Bank may deduct one-half of one percent of the outstanding loan balance as a service fee for administering the water infrastructure revolving loan fund. ~~The Bank shall contract with a certified public accounting firm to audit the fund. The fund must~~

be audited annually pursuant to section 6-09-29, and the cost of the audit must be paid from the fund.

**SECTION 6. AMENDMENT.** Section 6-09.8-03 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.8-03. Loan guarantee fund - Administrative charges.**

There is hereby created a beginning farmer loan guarantee fund which must be used by the Bank to carry out the provisions of this chapter. The fund must include the moneys appropriated by section 54-17-31 as it existed on June 30, 1983, and all earnings, less any administrative charges, from the investment of those moneys, and such moneys are hereby appropriated to the beginning farmer loan guarantee fund. Any and all administrative charges of the Bank necessary for the administration of the program established by this chapter may be charged to earnings of the fund. The fund must be audited annually pursuant to section 6-09-29, and the cost of the audit must be paid from the fund.

**SECTION 7. AMENDMENT.** Section 6-09.13-04 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.13-04. Agriculture partnership in assisting community expansion fund established - Continuing appropriation.**

The agriculture partnership in assisting community expansion fund is hereby established and is a revolving fund, and all moneys transferred into the fund, interest upon fund moneys, and payments to the fund are hereby appropriated for the purposes of section 6-09.13-05. After December 31, 1992, moneys may be transferred between this fund and the partnership in assisting community expansion fund established in section 6-09.14-02. This fund is not subject to section 54-44.1-11. The fund must be audited annually pursuant to section 6-09-29, and the cost of the audit must be paid from the fund.

**SECTION 8. AMENDMENT.** Section 6-09.14-02 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.14-02. Fund - Continuing appropriation - Administration.**

A partnership in assisting community expansion fund is hereby established from a transfer of earnings from the Bank of North Dakota. This is a revolving fund, and all moneys transferred into the fund, interest on fund moneys, and payments to the fund are hereby appropriated for the purposes of this chapter. This fund is not subject to section 54-44.1-11. The Bank of North Dakota shall administer the fund. The fund must be audited annually pursuant to section 6-09-29, and the cost of the audit must be paid from the fund.

**SECTION 9. AMENDMENT.** Section 6-09.15-02 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.15-02. Loan guarantee fund - Administration.**

A beginning entrepreneur loan guarantee fund is created to be used by the Bank of North Dakota to administer a beginning entrepreneur loan guarantee program to be used in conjunction with other loan programs. The fund includes moneys appropriated by the legislative assembly for administration of the program and all earnings, less any administrative charges, from the investment of those moneys. The Bank may retain any administrative charges necessary for the administration of the program

established by this chapter. The fund is not subject to section 54-44.1-11. The fund must be audited annually pursuant to section 6-09-29, and the cost of the audit must be paid from the fund.

**SECTION 10. AMENDMENT.** Section 6-09.16-03 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.16-03. Long-term care facility loan fund.**

1. There is created a long-term care facility loan fund. The fund consists of revenue transferred from the North Dakota health care trust fund, interest upon moneys in the fund, and collections of interest and principal on loans made from the fund.
2. The Bank of North Dakota shall administer the loan fund. Funds in the loan fund may be used for:
  - a. Loans as provided in this chapter and as approved by the department under chapter 50-30; and
  - b. The costs of administration of the fund. The fund must be audited annually pursuant to section 6-09-29, and the cost of the audit must be paid from the fund.
3. Any money in the fund not required for use under subsection 2 must be transferred to the North Dakota health care trust fund.

<sup>62</sup> **SECTION 11. AMENDMENT.** Section 6-09.18-05 of the North Dakota Century Code is amended and reenacted as follows:

**6-09.18-05. Innovation loan fund to support technology advancement - Continuing appropriation.**

The innovation loan fund to support technology advancement is a special fund in the state treasury and must be administered by the department of commerce. All moneys in the fund are appropriated to the department of commerce on a continuing basis for the purpose of providing innovation technology loans and for administrative expenses. The department of commerce shall deposit in the innovation loan fund to support technology advancement all principal and interest paid on loans made from the fund. Interest earned on moneys in the fund must be credited to the fund. The fund must be audited annually pursuant to section 6-09-29, and the cost of the audit must be paid from the fund.

<sup>63</sup> **SECTION 12. AMENDMENT.** Subsection 6 of section 15.1-36-08 of the North Dakota Century Code is amended and reenacted as follows:

6. The Bank may adopt policies and establish guidelines to administer this loan program in accordance with this section. The Bank of North Dakota may use a portion of the interest paid on the outstanding loans as a servicing fee to pay for administration costs which may not exceed one-half of one percent of the amount of the interest payment. The Bank of North Dakota shall deposit

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<sup>62</sup> Section 6-09.18-05 was also amended by section 17 of House Bill No. 1018, chapter 18.

<sup>63</sup> Section 15.1-36-08 was also amended by section 1 of House Bill No. 1161, chapter 197, and section 11 of Senate Bill No. 2284, chapter 173.

principal and interest payments made by school districts for loans under this section in the school construction assistance revolving loan fund. ~~The Bank of North Dakota shall arrange for the conduct of an annual audit of the school construction assistance revolving loan fund, the cost of which must be paid from the fund and which must be conducted by an independent accounting firm. The fund must be audited annually pursuant to section 6-09-29, and the cost of the audit must be paid from the fund.~~

**SECTION 13. AMENDMENT.** Section 17-03-02 of the North Dakota Century Code is amended and reenacted as follows:

**17-03-02. Biofuel partnership in assisting community expansion fund - Continuing appropriation - Administration.**

Effective July 1, 2007, the biodiesel partnership in assisting community expansion fund becomes the biofuel partnership in assisting community expansion fund. All moneys transferred into the fund, interest on fund moneys, and payments to the fund are appropriated for the purposes of this chapter. This fund is not subject to section 54-44.1-11. The Bank of North Dakota shall administer the fund. Notwithstanding any other provision of law, the Bank may transfer any unobligated moneys between funds that have been appropriated by the legislative assembly for interest buydown in the biofuel partnership in assisting community expansion fund and the partnership in assisting community expansion fund. The fund must be audited annually pursuant to section 6-09-29, and the cost of the audit must be paid from the fund.

<sup>64</sup> **SECTION 14. AMENDMENT.** Subsection 2 of section 54-63.1-07 of the North Dakota Century Code is amended and reenacted as follows:

2. Any bond proceeds deposited in the fund must be used for loans or loan guarantees. The Bank of North Dakota shall deposit in the fund all principal and interest paid on the loans made from the fund. The Bank may use a portion of the interest paid on the outstanding loans as a servicing fee to pay for administrative costs, not to exceed one-half of one percent of the amount of the interest payment. ~~The Bank shall contract with a certified public accounting firm to audit the fund annually if the fund has any outstanding loans. The fund must be audited annually pursuant to section 6-09-29, and the cost of the audit must be paid from the fund.~~

Approved March 27, 2023

Filed March 28, 2023

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<sup>64</sup> Section 54-63.1-07 was also amended by section 23 of House Bill No. 1014, chapter 14.

## CHAPTER 96

### SENATE BILL NO. 2330

(Senators Klein, Hogan, Meyer)  
(Representatives Bosch, Kreidt)

AN ACT to amend and reenact subsection 3 of section 6-09-49 and sections 21-10-11 and 21-10-12 of the North Dakota Century Code, relating to the infrastructure revolving loan fund, the legacy and budget stabilization fund advisory board, and legacy fund definitions; and to declare an emergency.

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

<sup>65</sup> **SECTION 1. AMENDMENT.** Subsection 3 of section 6-09-49 of the North Dakota Century Code is amended and reenacted as follows:

3. In processing political subdivision loan applications under this section, the Bank shall calculate the maximum outstanding loan amount per qualified applicant. A qualified applicant under this section may have a maximum combined total of ~~forty~~twenty million dollars in outstanding loans under this section and section 6-09-49.1. The Bank shall consider the applicant's ability to repay the loan when processing the application and shall issue loans only to applicants that provide reasonable assurance of sufficient future income to repay the loan.

<sup>66</sup> **SECTION 2. AMENDMENT.** Section 21-10-11 of the North Dakota Century Code is amended and reenacted as follows:

#### **21-10-11. Legacy and budget stabilization fund advisory board.**

1. The legacy and budget stabilization fund advisory board is created to develop recommendations for the investment of funds in the legacy fund and the budget stabilization fund to present to the state investment board.
2. The goal of investment for the legacy fund is principal preservation and growth while maximizing total return for an appropriate level of risk and to provide a direct benefit to the state by investing a portion of the principal in the state. Preference must be given to qualified investment firms and financial institutions with a presence in the state for investment of the legacy fund.
3. The board shall determine the asset allocation for the investment of the principal of the legacy fund including:
  - a. A target allocation of ~~ten percent~~seven hundred million dollars to fixed income investments within the state, ~~of which~~including:

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<sup>65</sup> Section 6-09-49 was also amended by section 1 of House Bill No. 1292, chapter 97.

<sup>66</sup> Section 21-10-11 was also amended by section 2 of House Bill No. 1088, chapter 227.

- (1) ~~Up to forty percent must be targeted~~ one hundred fifty million dollars for infrastructure loans to political subdivisions under section 6-09-49.1. The net return to the legacy fund under this paragraph must be fixed at a target rate of one and one-half percent;
  - (2) ~~Up to sixty percent, with a~~ minimum of four hundred million dollars, ~~must be designated to~~ for the Bank of North Dakota's certificate of deposit match program with an interest rate fixed at the equivalent yield of United States treasury bonds having the same term, up to a maximum term of twenty years; and
  - (3) ~~Any remaining amounts must be designated for other~~ Other qualified fixed income investments within the state based on guidelines developed by the legacy and budget stabilization fund advisory board.
- b. A target allocation of ~~ten percent~~ six hundred million dollars to equity investments in the state, of which including:
- (1) ~~At least three percent may be targeted for investment~~ Investments in one or more equity funds, venture capital funds, or alternative investment funds with a primary strategy of investing in emerging or expanding companies in the state. Equity investments under this paragraph must:
    - (a) Be managed by qualified investment firms, financial institutions, or equity funds which have a strategy to invest in qualified companies operating or seeking to operate in the state and which have a direct connection to the state; and
    - (b) Have a benchmark investment return equal to the five-year average net return for the legacy fund, excluding in-state investments; and
  - (2) ~~The legacy and budget stabilization fund advisory board may develop guidelines for other~~ Other eligible investments under this subdivision based on guidelines developed by the legacy and budget stabilization fund advisory board.
4. The board consists of three members of the senate appointed by the senate majority leader, three members of the house of representatives appointed by the house majority leader, the president of the Bank of North Dakota or designee, the tax commissioner or designee, the insurance commissioner or designee, and the state treasurer or designee. The board shall select a member from the senate or house of representatives to serve as chairman for no more than one consecutive year and must meet at the call of the chairman.
  5. The board shall report at least semiannually to the budget section.
  6. Legislative members are entitled to receive compensation and expense reimbursement as provided under section 54-03-20 and reimbursement for mileage as provided by law for state officers. The legislative council shall pay the compensation and expense reimbursement for the legislative members.
  7. The legislative council shall provide staff services to the legacy and budget stabilization fund advisory board.

8. The staff and consultants of the state retirement and investment office shall advise the board in developing asset allocation and investment policies.
9. The board may develop a process to select a member of the board who is not a member of the state investment board to serve on the state investment board in a nonvoting capacity.

**SECTION 3. AMENDMENT.** Section 21-10-12 of the North Dakota Century Code is amended and reenacted as follows:

**21-10-12. Legacy fund definitions.**

For the purposes of section 26 of article X of the Constitution of North Dakota:

1. "Earnings" means ~~net income in accordance with generally accepted accounting principles, excluding any unrealized gains or losses~~an amount equal to seven percent of the five-year average value of the legacy fund assets as reported by the state investment board using the value of the assets at the end of each fiscal year for the five-year period ending with the most recently completed even-numbered fiscal year.
2. "Principal" means all moneys in the legacy fund not included in earnings as defined under subsection 1.

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

Approved April 29, 2023

Filed May 1, 2023

## CHAPTER 97

### HOUSE BILL NO. 1292

(Representatives Porter, Bosch, Toman)  
(Senators Cleary, Larsen)

AN ACT to amend and reenact section 6-09-49 of the North Dakota Century Code, relating to capital construction projects; and to declare an emergency.

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

<sup>67</sup> **SECTION 1. AMENDMENT.** Section 6-09-49 of the North Dakota Century Code is amended and reenacted as follows:

#### **6-09-49. Infrastructure revolving loan fund - Continuing appropriation.**

1. The infrastructure revolving loan fund is a special fund in the state treasury from which the Bank of North Dakota shall provide loans to political subdivisions, the Garrison Diversion Conservancy District, and the Lake Agassiz water authority for essential infrastructure projects. The Bank shall administer the infrastructure revolving loan fund. The maximum term of a loan made under this section is the lesser of thirty years or the useful life of the project. A loan made from the fund under this section must have an interest rate that does not exceed two percent per year.
2. For purposes of this section, "essential infrastructure projects" means capital construction projects to construct new infrastructure or replace existing infrastructure, which provide the fixed installations necessary for the function of a political subdivision. Capital construction projects exclude routine maintenance and repair projects, but include the following:
  - a. The Red River valley water supply project;
  - b. Water treatment plants;
  - c. Wastewater treatment plants;
  - d. Sewerlines and waterlines, including lift stations and pumping systems;
  - e. Storm water infrastructure, including curb and gutter construction;
  - f. Water storage systems, including dams, water tanks, and water towers;
  - g. Road and bridge infrastructure, including paved and unpaved roads and bridges;
  - h. Airport infrastructure;
  - i. Electricity transmission infrastructure;

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<sup>67</sup> Section 6-09-49 was also amended by section 1 of Senate Bill No. 2330, chapter 96.

- j. Natural gas transmission infrastructure;
  - k. Communications infrastructure;
  - l. Emergency services facilities, excluding hospitals; and
  - m. Critical political subdivision buildings and infrastructure; and
  - n. Infrastructure required to service recreation and community facilities, not including the construction of a building or recreational amenity.
3. In processing political subdivision loan applications under this section, the Bank shall calculate the maximum outstanding loan amount per qualified applicant. A qualified applicant under this section may have a maximum combined total of forty million dollars in outstanding loans under this section and section 6-09-49.1. The Bank shall consider the applicant's ability to repay the loan when processing the application and shall issue loans only to applicants that provide reasonable assurance of sufficient future income to repay the loan.
  4. The Bank shall deposit in the infrastructure revolving loan fund all payments of interest and principal paid under loans made from the infrastructure revolving loan fund. The Bank may use a portion of the interest paid on the outstanding loans as a servicing fee to pay for administrative costs which may not exceed one-half of one percent of the amount of the interest payment. All moneys transferred to the fund, interest upon moneys in the fund, and payments to the fund of principal and interest are appropriated to the Bank on a continuing basis for administrative costs and for loan disbursement according to this section.
  5. The Bank may adopt policies and establish guidelines to administer this loan program in accordance with the provisions of this section and to supplement and leverage the funds in the infrastructure revolving loan fund. Additionally, the Bank may adopt policies allowing participation by local financial institutions.
  6. If a political subdivision applies for a loan under this section for a county road or bridge project, the department of transportation shall review and approve the project before the Bank may issue a loan. If a political subdivision applies for a loan under this section for a water-related project, the state water commission shall review and approve the project before the Bank may issue a loan. The department of transportation and state water commission may develop policies for reviewing and approving projects under this section.

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

Approved April 10, 2023

Filed April 11, 2023

## CHAPTER 98

### HOUSE BILL NO. 1379

(Representatives Lefor, Bosch, Dockter, Headland, Nathe, Novak, O'Brien)  
(Senators Bekkedahl, Hogue, Rummel, Sorvaag)

AN ACT to amend and reenact sections 6-09.4-10.1 and 21-10-13 of the North Dakota Century Code, relating to the legacy sinking and interest fund and the legacy earnings fund; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 6-09.4-10.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **6-09.4-10.1. Legacy sinking and interest fund - Debt service requirements - Public finance authority.**

There is created in the state treasury the legacy sinking and interest fund. The fund consists of all moneys deposited in the fund under section 21-10-13. Moneys in the fund may be spent by the public finance authority pursuant to legislative appropriations to meet the debt service requirements for evidences of indebtedness issued by the authority for transfer to the Bank of North Dakota for allocations to infrastructure projects and programs. ~~Any moneys in the fund in excess of the amounts appropriated from the fund to meet the debt service requirements for a biennium must be transferred by the state treasurer to the public employees retirement system main system plan under chapter 54-52, but only if the public employees retirement system main system plan's actuarial funded ratio as reported for the most recently completed even-numbered fiscal year is less than ninety percent. If the public employees retirement system main system plan's actuarial funded ratio is ninety percent or more and then subsequently decreases below ninety percent, the state treasurer may not resume the transfers under this subdivision unless the main system plan's actuarial funded ratio is less than seventy percent.~~

**SECTION 2. AMENDMENT.** Section 21-10-13 of the North Dakota Century Code is amended and reenacted as follows:

##### **21-10-13. Legacy earnings fund - State treasurer - Transfers.**

1. There is created in the state treasury the legacy earnings fund. The fund consists of all moneys transferred to the fund under subsection 2 and all interest and earnings upon moneys in the fund.
2. Any legacy fund earnings transferred to the general fund at the end of each biennium in accordance with section 26 of article X of the Constitution of North Dakota must be immediately transferred by the state treasurer to the legacy earnings fund.
3. For each biennium subsequent to the biennium in which the legacy fund earnings are transferred under subsection 2, the amount available for appropriation from the legacy earnings fund is seven percent of the five-year average value of the legacy fund assets as reported by the state investment

board. The average value of the legacy fund assets must be calculated using the value of the assets at the end of each fiscal year for the five-year period ending with the most recently completed even-numbered fiscal year.

4. On July first of each odd-numbered year, from the amount available for appropriation or transfer from the legacy earnings fund for the biennium, the state treasurer shall transfer funding in the following order:
  - a. The first one hundred fiftytwo million six hundred twenty-four thousand dollars or an amount equal to the amount appropriated from the legacy sinking and interest fund for debt service payments for a biennium, whichever is less, to the legacy sinking and interest fund under section 6-09.4-10.1.
  - b. The next two hundred twenty-five million dollars to the general fund to provide support for tax relief initiatives approved by the legislative assembly.
  - c. The next sixtyone hundred million dollars to the legacy earnings highway tax distribution fund for allocations under section 54-27-1954-27-19.3.
  - e.d. Any remaining funds for other purposes as designated by the legislative assembly, including amounts under this subsection as follows:
    - (1) Up to fifty million dollars for tax relief pursuant to appropriations or transfers authorized by the legislative assembly; Fifty percent to the general fund.
    - (2) Up to thirty million dollars to the clean sustainable energy fund pursuant to appropriations or transfers authorized by the legislative assembly; and
    - (3) Up to thirty million dollars for university research programs, the innovation loan fund to support technology advancement, and workforce enrichment initiatives pursuant to appropriations or transfers authorized by the legislative assembly. The remaining fifty percent to the strategic investment and improvements fund to be used in accordance with the provisions of section 15-08.1-08.
5. If the amounts transferred under subsection 2 exceed the amount available for appropriation under subsection 3, an amount equal to any appropriations from the legacy sinking and interest fund for bond payments under section 6-09.4-10.1 must be retained in the legacy earnings fund through June 30, 2025, after which an amount equal to twice any appropriations from the legacy sinking and interest fund under section 6-09.4-10.1 for bond payments, but not more than one hundred fifty million dollars, must be retained in the legacy earnings fund. After deducting any amounts to be retained in the legacy earnings fund, the state treasurer shall transfer, within thirty days, any remaining amounts under this subsection in the following order: the state treasurer shall transfer the excess and any remaining amounts after the transfers and appropriations under subsection 4, as follows:
  - a. The first one hundred million dollars to the legacy fund to become part of the principal. Fifty percent to the general fund.

- b. ~~Any remaining amount to the~~The remaining fifty percent to the strategic investment and improvements fund to be used in accordance with the provisions of section 15-08.1-08.

**SECTION 3. EFFECTIVE DATE.** This Act becomes effective July 1, 2023.

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

Approved May 8, 2023

Filed May 9, 2023

## CHAPTER 99

### HOUSE BILL NO. 1125

(Representatives Richter, Longmuir, Monson, Nathe)  
(Senators Patten, Schaible)

AN ACT to amend and reenact section 6-09.4-23 of the North Dakota Century Code, relating to withholding school district state aid payments and the school district credit enhancement program.

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

**SECTION 1. AMENDMENT.** Section 6-09.4-23 of the North Dakota Century Code is amended and reenacted as follows:

#### **6-09.4-23. Evidences of indebtedness - Authority to withhold school district state aid.**

1. If the public finance authority or a paying agent notifies the superintendent of public instruction, in writing, that a school district has failed to pay when due the principal or interest on any evidences of indebtedness issued after July 31, 1999, or that the public finance authority, school district, or the paying agent has reason to believe a school district will not be able to make a full payment of the principal and interest when the payment is due, the superintendent of public instruction shall withhold any funds that are due or payable or appropriated to the school district under chapter 15.1-27 until the payment of the principal or interest has been made to the public finance authority or the paying agent, or until the public finance authority, school district, or the paying agent notifies the superintendent of public instruction that arrangements satisfactory to the public finance authority or the paying agent have been made for the payment of the principal and interest then due and owing. The notification must include information required by the superintendent of public instruction. State funds available to a school district under chapter 15.1-27 are not subject to withholding under this section unless the withholding is authorized by resolution of the district's school board.
2. If the public finance authority or a paying agent notifies the state treasurer, in writing, that a school district has failed to pay when due the principal or interest on any evidence of indebtedness issued after July 31, 2023, or that the public finance authority, school district, or the paying agent has reason to believe a school district will not be able to make a full payment of the principal and interest when the payment is due, the state treasurer shall withhold any funds that are due or payable or appropriated to the school district under chapter 57-51 until the payment of the principal or interest has been made to the public finance authority or the paying agent, or until the public finance authority, school district, or the paying agent notifies the state treasurer that arrangements satisfactory to the public finance authority or the paying agent have been made for the payment of the principal and interest then due and owing. The notification must include information required by the state treasurer. State funds available to a school district under chapter 57-51 are not subject to withholding under this section unless the withholding is authorized by resolution of the district's school board.

3. If the public finance authority or a paying agent notifies the county auditor, in writing, that a school district has failed to pay when due the principal or interest on any evidence of indebtedness issued after July 31, 2023, or that the public finance authority, school district, or the paying agent has reason to believe a school district will not be able to make a full payment of the principal and interest when the payment is due, the county auditor shall withhold any funds that are due or payable or appropriated to the school district under chapters 57-33.2, 57-34, and 57-55 and section 21-06-10 until the payment of the principal or interest has been made to the public finance authority or the paying agent, or until the public finance authority, school district, or the paying agent notifies the county auditor that arrangements satisfactory to the public finance authority or the paying agent have been made for the payment of the principal and interest then due and owing. The notification must include information required by the county auditor. State funds available to a school district under chapters 57-33.2, 57-34, and 57-55 and section 21-06-10 are not subject to withholding under this section unless the withholding is authorized by resolution of the district's school board.
4. Notification by the public finance authority, school district, or the paying agent that satisfactory arrangements have been made for the payment of the principal and interest then due and owing under subsection 1, 2, or 3 must be made at least fifteen working days before the principal or interest is due. The notice must be in writing and include the name of the school district, an identification of the debt obligation issue, the date the payment is due, the amount of principal and interest due on the payment date, the amount of principal or interest the school district will be unable to pay, the paying agent for the debt obligation, the wire transfer instructions to transfer funds to the paying agent, and an indication that payment is requested under this section. A paying agent shall notify the superintendent of public instruction, the state treasurer, and the appropriate county auditor if the paying agent becomes aware of a potential default. If the superintendent, state treasurer, or the county auditor receives notice of a requested payment under this section, the superintendent of public instruction, state treasurer, or county auditor shall withhold and transfer funds due or payable or appropriated to the school district under chapter 15.1-27 or 57-51 to the paying agent after:

  - a. Consulting with the school district and the paying agent; and
  - b. Verifying the accuracy of the provided request information.
- 3-5. Notwithstanding any withholding of state funds under section 15-39.1-23 or any other law, the superintendent of public instruction, state treasurer, and county auditor shall make available any funds withheld under subsection 1, 2, or 3 to the public finance authority or the paying agent. The public finance authority or the paying agent shall apply the funds to payments that the school district is required to make to the public finance authority or the paying agent.
- 4-6. If funds are withheld from a school district and made available to the public finance authority or a paying agent under this section and if tax revenues are received by the school district during the fiscal year in which the funds are withheld and are deposited in the district's sinking fund established in accordance with section 21-03-42, the district, with the consent of the public finance authority or the paying agent, may withdraw from its sinking fund an amount equal to that withheld ~~by the superintendent of public instruction and~~

made available to the public finance authority or a paying agent under this section.

5. ~~Any excess funds at the Bank of North Dakota escrowed pursuant to an agreement between the public finance authority and the state board of public school education for the benefit of the public finance authority and a school district must be held by the Bank. With the approval of the superintendent of public instruction, those funds may be used to subsidize the debt service payments on construction loans that are made to school districts by the public finance authority and which are subject to the withholding provisions of this section or construction loans made to school districts under the state school construction program established by section 11 of chapter 2 of the 1989 Session Laws. Notwithstanding the existence of an escrow agreement between the public finance authority and the state board of public school education, those funds must be transferred to the public finance authority upon certification by the public finance authority that the funds are in excess of the amount needed to provide for the payment in full of the outstanding principal and interest, when due, on the public finance authority bonds issued to purchase the municipal securities for which the escrow fund was established.~~
- 6-7. The superintendent of public instruction, state treasurer, and county auditor shall develop detailed procedures for a school districtsdistrict to notify the superintendent of public instruction, state treasurer, and the county auditor that they havethe school district has obligated themselves the district to be bound by the provisions of this section; procedures for a school districtsdistrict, paying agentsagent, and the public finance authority to notify the superintendent of public instruction, state treasurer, or county auditors of potential defaults and to request payment under this section; and procedures for the state to expedite payments to prevent defaults.

Approved March 14, 2023

Filed March 15, 2023

# CORPORATIONS

## CHAPTER 100

### SENATE BILL NO. 2325

(Senators Lee, Barta, J. Roers)  
(Representatives Beltz, Boschee, Schreiber-Beck)

AN ACT to create and enact a new section to chapter 10-04 of the North Dakota Century Code, relating to the restitution assistance fund for victims of securities violations; to provide a continuing appropriation; and to provide for application.

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

**SECTION 1.** A new section to chapter 10-04 of the North Dakota Century Code is created and enacted as follows:

##### **Restitution assistance fund - Continuing appropriation.**

1. As used in this section:
  - a. "Claimant" means an individual who meets the definition of eligible adult under section 10-04-08.5 and files an application for restitution assistance under this section. The term includes the named party, the executor of a named party, the heirs and assignees of a named party, or any other individual with lawful authority to act for or on behalf of the named party in a restitution award in a final order.
  - b. "Final order" means an order issued by the commissioner under this chapter or a final order issued by the court in a legal action initiated by the commissioner under this chapter.
  - c. "Securities violation" means a violation of any provision of this chapter, or any rule or order issued by the commissioner under this chapter.
  - d. "Victim" means an individual who meets the definition of an eligible adult under section 10-04-08.5 and is awarded restitution in a final order.
2. A special fund is established in the state treasury and is designated as the restitution assistance fund for eligible adult victims. The commissioner shall deposit up to one million dollars per biennium from the department's revenue into the fund. The moneys in the fund are appropriated on a continuing basis to the commissioner to provide restitution assistance for victims who have not received full restitution from a final order before the application for restitution assistance is due.
3. An individual is eligible for restitution assistance if the individual:
  - a. Is a resident of the state who is a victim of a securities violation committed in this state or other jurisdiction, including a foreign country, if the

- jurisdiction does not offer assistance substantially similar to the assistance offered under this section.
- b. Is a nonresident who is a victim of a securities violation committed in this state if the nonresident's home state offers residents of this state substantially similar assistance as offered under this section.
  - c. Submits an application, in the manner prescribed by the commissioner, for restitution assistance within two years of the date of the final order, except the commissioner may grant an extension of time for submission of an application for restitution assistance upon a showing of good cause by the claimant.
4. The commissioner may award the lesser of fifty thousand dollars or fifty percent of the amount of unpaid restitution awarded in the final order to a claimant. An award of restitution assistance may be made only to one claimant per victim. The commissioner may waive any limitations on payment upon a showing of good cause.
  5. The commissioner may not award restitution assistance if:
    - a. The victim sustained the monetary injury as a result of:
      - (1) Participating or assisting in a securities violation; or
      - (2) Attempting or committing a securities violation; or
    - b. The victim profited or would have profited from a securities violation.
  6. A claimant convicted of any crime deemed relevant by the commissioner in connection to a claim made under this section shall forfeit any restitution assistance awarded to the claimant.
  7. The commissioner may bring a civil action to recover funds awarded to a claimant convicted of any crime deemed relevant by the commissioner in connection with a claim under this section.
  8. If the commissioner overturns a final order or a final order is overturned on appeal after restitution assistance has been made to a claimant, the commissioner may issue an order to recover the restitution assistance.
  9. The department is subrogated to the rights of the claimant awarded restitution assistance. The subrogation rights are against the individual ordered to pay restitution to the victim for the securities violation. In addition, the commissioner is entitled to a lien in the amount of the award on a recovery made by or on behalf of the victim. The commissioner may recover the amount in a separate action or intervene in an action brought by or on behalf of the victim.
  10. A claimant shall refund to the commissioner any amount of restitution received if the combined total of the restitution assistance exceeds the restitution awarded in the final order. Any moneys recovered by the commissioner under subsections 7, 8, and 9 must be returned to the fund.

11. The commissioner may suspend payment of claims or prorate payment of claims until such a time the commissioner determines a sufficient balance has been restored to the fund if payment of restitution assistance would result in a fund balance below one hundred thousand dollars.
12. Restitution assistance awarded by the commissioner under this section is not subject to execution, attachment, garnishment, or other process, except those executions, attachments, garnishments, or other processes brought by or on behalf of the state.
13. The commissioner may adopt rules pursuant to chapter 28-32 to carry out this section.

**SECTION 2. APPLICATION.** Restitution assistance awards may be made under this Act only to victims awarded restitution in a final order issued on or after the effective date of this Act.

Approved April 6, 2023

Filed April 10, 2023

## CHAPTER 101

### SENATE BILL NO. 2060

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

AN ACT to create and enact subsection 7 of section 10-04-07.2 of the North Dakota Century Code, relating to fees of an effective offering; and to amend and reenact subsection 17 of section 10-04-06, subsection 5 of section 10-04-08.4, sections 10-04-10, 10-04-10.1, and 10-04-10.3, subsection 1 of section 10-04-16, and subsection 1 of section 10-04-16.1 of the North Dakota Century Code, relating to exempt transaction filling requirements, federal crowdfunding, investment advisors' custody, postregistration recordkeeping, effectiveness of orders, and professional services for investigations.

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

**SECTION 1. AMENDMENT.** Subsection 17 of section 10-04-06 of the North Dakota Century Code is amended and reenacted as follows:

17. Any offer or sale of a security by an issuer in a transaction provided all of the following conditions are met:
  - a. Sales of securities may be made only to persons who are, or the issuer reasonably believes are, accredited investors as defined in 17 CFR 230.501(a) promulgated by the securities and exchange commission.
  - b. The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.
  - c. The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to, or for, sale in connection with a distribution of the security. Any resale of a security sold in reliance of this exemption within twelve months of sale must be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under section 10-04-04 or to an accredited investor pursuant to an exemption available under subsection 5.
  - d. (1) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director, or officer of such underwriter:
    - (a) Within the last five years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the securities and exchange commission;

- (b) Within the last five years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;
  - (c) Is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or
  - (d) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.
- (2) Paragraph 1 does not apply if:
- (a) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;
  - (b) Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or
  - (c) The issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this subdivision.
- e. (1) A general announcement of the proposed offering may be made by any means.
- (2) The general announcement must include only the following information, unless additional information is specifically permitted by the commissioner:
- (a) The name, address, and telephone number of the issuer of the securities;
  - (b) The name, a brief description, and price, if known, of any security to be issued;
  - (c) A brief description of the business of the issuer in twenty-five words or less;
  - (d) The type, number, and aggregate amount of securities being offered;
  - (e) The name, address, and telephone number of the person to contact for additional information; and
  - (f) A statement that:

- [1] Sales will only be made to accredited investors;
  - [2] No money or other consideration is being solicited or will be accepted by way of this general announcement; and
  - [3] The securities have not been registered with or approved by any state securities agency or the securities and exchange commission and are being offered and sold pursuant to an exemption from registration.
- f. The issuer, in connection with an offer, may provide information in addition to the general announcement under subdivision e, if such information:
- (1) Is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or
  - (2) Is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.
- g. Telephone solicitation is not permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.
- h. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors does not disqualify the issuer from claiming the exemption.
- i. The issuer shall file with the department a notice of transaction, a consent to service of process, a copy of the general announcement, and a nonrefundable filing fee of one hundred dollars within fifteen days after the first sale in this state. In the event the filing is not made within fifteen days after the first sale in this state, the filing fee is two hundred fifty dollars.
- j. 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.

**SECTION 2.** Subsection 7 of section 10-04-07.2 of the North Dakota Century Code is created and enacted as follows:

7. 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.

**SECTION 3. AMENDMENT.** Subsection 5 of section 10-04-08.4 of the North Dakota Century Code is amended and reenacted as follows:

5. a- The following provisions apply to offerings made under federal Regulation Crowdfunding [17 CFR 227] and sections 4(a)(6) and 18(b)(4)(C) of the Securities Act of 1933 [15 U.S.C. 77d(a)(b) and 15 U.S.C. 77r(b)(4)(C)]:

- (1) ~~a.~~(1) An issuer that offers and sells securities in this state in an offering exempt under federal Regulation Crowdfunding [17 CFR 227],

and that either has the issuer's principal place of business in this state or sells fifty percent or greater of the aggregate amount of the offering to residents of this state, shall file electronically the following with the commissioner:

- [1](a) A completed uniform notice of federal crowdfunding offering form;
- [2](b) A copy of any document filed with the securities and exchange commission, as the commissioner may require; and
- [3](c) A filing fee of one hundred fifty dollars.

(b)(2) If the issuer has the issuer's principal place of business in this state, the filing required under this subsection must be filed with the commissioner when the issuer makes its initial form C filing concerning the offering with the securities and exchange commission. If the issuer does not have the issuer's principal place of business in this state but residents of this state have purchased fifty percent or greater of the aggregate amount of the offering, the filing required under this subsection must be filed when the issuer becomes aware that such purchases have met this threshold and in no event later than thirty days from the date of completion of the offering. The initial notice filing is effective for twelve months from the date of the filing with this state.

- (2)b. An issuer conducting an offering under this subsection may renew the offering for an additional period of twelve months by electronically filing the uniform notice of federal crowdfunding offering form marked "renewal" and payment of the renewal filing fee of one hundred dollars.
- b. ~~A security may not 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 the security 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.~~

**SECTION 4. AMENDMENT.** Section 10-04-10 of the North Dakota Century Code is amended and reenacted as follows:

**10-04-10. Registration of broker-dealers, agents, investment advisers, and investment adviser representatives - Notice filings by federal covered advisers.**

1. Broker-dealers. It is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under this chapter as a broker-dealer or is exempt. The following persons are exempt from the registration requirements:
  - a. A broker-dealer without a place of business in this state if its only transactions effected in this state are with:
    - (1) The issuer of the securities involved in the transactions;
    - (2) A broker-dealer registered as a broker-dealer under this chapter or not required to be registered as a broker-dealer under this chapter;
    - (3) An institutional investor;

- (4) A nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars acting for the account of others pursuant to discretionary authority in a signed record;
  - (5) A bona fide pre-existing customer whose principal place of residence is not in this state and the person is registered as a broker-dealer under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the state in which the customer maintains a principal place of residence; and
  - (6) A bona fide pre-existing customer whose principal place of residence is in this state but was not present in this state when the customer relationship was established, if:
    - (a) The broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence; and
    - (b) Within thirty days after the customer's first transaction in this state, the person files an application for registration as a broker-dealer in this state and a further transaction is not effected more than forty-five days after the date on which the application is filed, or, if earlier, the date on which the commissioner notifies the person that the commissioner has denied the application for registration or has stayed the pendency of the application for good cause.
- b. A person that deals solely in United States government securities and is supervised as a broker-dealer in government securities by the board of governors of the federal reserve system, the comptroller of the currency, the federal deposit insurance corporation, or the office of thrift supervision.

Application for registration as a broker-dealer must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant, duly verified by oath, must be filed with the department, and must contain information the commissioner determines to be necessary concerning the applicant.

The commissioner may also require such additional information relating to the applicant and as to the previous history, record, or association of the applicant, its officers, directors, employees, members, partners, managers, or trustees as the commissioner deems necessary to establish whether or not the applicant should be registered as a broker-dealer under the provisions of this law.

There must be filed with such application a written consent to the service of process upon the commissioner in actions against such broker-dealer, conforming to the requirements of section 10-04-14.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as a broker-dealer

unless the commissioner finds that the applicant is not of good business reputation, or is not solvent, or the applicant's principals and compliance or sales supervisor do not appear qualified by training, examination, or experience to act on behalf of a broker-dealer in securities.

Except as prohibited by the Securities Exchange Act of 1934, the commissioner may require an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by the broker-dealer and the broker-dealer's agents with all the provisions of this law and for the faithful performance and payment of all obligations of the broker-dealer and the broker-dealer's agents.

The bond must be of such type as may be approved by the commissioner and must be in such amount as the commissioner deems necessary to protect purchasers. Any such bond must have as surety thereon a surety company authorized to do business in this state. When the commissioner has registered an applicant as a broker-dealer, the commissioner shall notify the applicant of such registration.

2. a. Agent. It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration. The following individuals are exempt from the registration requirements:
  - (1) An individual who represents a broker-dealer in effecting transactions in this state limited to those in section 15(h)(2) of the Securities Exchange Act of 1934;
  - (2) An individual who represents a broker-dealer that is exempt under subsection 1;
  - (3) An individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities; or
  - (4) An individual who represents a broker-dealer registered in this state or exempt from registration in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars acting for the account of others pursuant to discretionary authority in a signed record.
- b. Application for registration as an agent must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant and by the registered broker-dealer or issuer employing or proposing to employ such applicant, duly verified by oath, must be filed with the department, and must contain information the commissioner determines to be necessary concerning the applicant.

- c. The commissioner shall require as a condition of registration that the applicant pass a written examination as evidence of knowledge of the securities business.
- d. The commissioner may also require such additional information as to the applicant's previous business experience as the commissioner deems necessary to determine whether or not the applicant should be registered as an agent under the provisions of this law. If an agent proposes to be self-employed, the agent shall specifically state the particular security or securities the agent proposes to sell in this state in the application, and if said security or securities are exempt under section 10-04-05 or 10-04-06, or have been registered by announcement under section 10-04-07.1, or have been registered by coordination under section 10-04-07.2, or have been registered by qualification under section 10-04-08, then the commissioner may require that said self-employed agent file an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by said self-employed agent with all the applicable provisions of this chapter and for the faithful performance and payment of all obligations hereunder. The bond must be in a form approved and in the amount required by the commissioner.
- e. When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as an agent unless the commissioner finds that such applicant is not of good business reputation, or that the broker-dealer named on the application is not a registered broker-dealer. When the commissioner has registered an applicant as an agent, the commissioner shall immediately notify the broker-dealer of such registration.
- f. Every registered broker-dealer or issuer promptly shall notify the department of the termination of the employment by the broker-dealer or issuer of a registered agent.

Application for registration as an agent must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant and by the registered broker-dealer or issuer employing or proposing to employ such applicant, duly verified by oath, must be filed with the department, and must contain information the commissioner determines to be necessary concerning the applicant.

The commissioner shall require as a condition of registration that the applicant pass a written examination as evidence of knowledge of the securities business; provided, that not more than two officers or managers of an issuer may be registered as an agent for a particular original offering of the issuer's securities without being required to pass such written examination; and provided, further, that no such officer or manager may again register within three years as such agent for this or any other issuer without passing the written examination.

The commissioner may also require such additional information as to the applicant's previous business experience as the commissioner deems necessary to determine whether or not the applicant should be registered as an agent under the provisions of this law. If an agent proposes to be self-employed, the agent shall specifically state the particular security or securities the agent proposes to sell in this state in the application, and if said

security or securities are exempt under section 10-04-05 or 10-04-06, or have been registered by announcement under section 10-04-07.1, or have been registered by qualification under section 10-04-08, then the commissioner may require that said self-employed agent file an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by said self-employed agent with all the applicable provisions of this chapter and for the faithful performance and payment of all obligations hereunder. The bond must be in a form approved and in the amount required by the commissioner.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as an agent unless the commissioner finds that such applicant is not of good business reputation, or that the broker-dealer named on the application is not a registered broker-dealer. When the commissioner has registered an applicant as an agent, the commissioner shall immediately notify the broker-dealer of such registration.

Every registered broker-dealer or issuer shall promptly notify the department of the termination of the employment by the broker-dealer or issuer of a registered agent.

### 3. Investment advisers.

a. It is unlawful for any person to transact business in this state as an investment adviser unless the person is registered under this chapter as an investment adviser or is exempt from registration as an investment adviser. The following persons are exempt from the registration requirements:

(1) A person without a place of business in this state that is registered under the securities laws of the state in which the person has its principal place of business if its only clients in this state are:

(a) Federal covered investment advisers, investment advisers registered under this chapter, or broker-dealers registered under this chapter;

(b) Institutional investors; or

(c) Bona fide pre-existing clients whose principal places of residence are not in this state if the investment adviser is registered under the securities laws of the state in which the clients maintain principal places of residences.

(2) A person without a place of business in this state if the person has had, during the preceding twelve months not more than five clients resident in this state in addition to those specified in paragraph 1; or

(3) Any other person exempted by rule or order of the commissioner issued under this chapter.

b. Application for registration as an investment adviser must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant, duly verified by oath, must be filed with the

department, and must contain information the commissioner determines to be necessary concerning the applicant.

The commissioner may also require such additional information relating to the applicant and as to the previous history, record, or association of the applicant, its officers, directors, employees, members, partners, managers, or trustees, as the commissioner deems necessary to establish whether or not the applicant should be registered as an investment adviser under the provisions of this chapter.

Except as prohibited by the Investment Advisers Act of 1940, the commissioner may require an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by the investment adviser and the investment adviser's representatives with all the provisions of this law and for the faithful performance and payment of all obligations of the investment adviser and the investment adviser's representatives. The bond must be of such type as may be approved by the commissioner and must be in such amount as the commissioner deems necessary to protect persons in this state. Any such bond must have as surety thereon a surety company authorized to do business in this state.

The commissioner may by rule or order provide for an examination to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make the person an investment adviser.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as an investment adviser unless the commissioner finds that the applicant is not of good business reputation or is not solvent.

A registrant as investment adviser shall notify the department of any change of address.

4. Federal covered adviser.
  - a. Except with respect to a federal covered investment adviser described in subdivision b, it shall be unlawful for a person to transact business in this state as a federal covered adviser unless such person has made a notice filing with the department, in writing or electronically, consisting of a copy of those documents that have been filed with the securities and exchange commission as the commissioner may require by rule or otherwise and the prescribed notice filing fee.
  - b. The following federal covered investment advisers are not required to comply with the notice filing requirement:
    - (1) A federal covered investment adviser without a place of business in this state if its only clients are:
      - (a) Federal covered investment advisers, investment advisers registered under this chapter, and broker-dealers registered under this chapter;
      - (b) Institutional investors; or

(c) Bona fide pre-existing clients whose principal places of residence are not in this state.

- (2) A federal covered investment adviser without a place of business in this state if the person has had, during the preceding twelve months, not more than five clients that are resident in this state in addition to those specified under paragraph 1.

A notice filing is effective from receipt until the following December thirty-first. It may be renewed by filing with the department, prior to expiration, those documents filed with the securities and exchange commission as the commissioner may require by rule or otherwise, with the notice filing renewal fee.

If the information contained in any document filed with the department is or becomes inaccurate or incomplete in any material respect, the federal covered adviser shall file an amendment with the department whenever such amendment is filed with the securities and exchange commission.

A notice filing may be terminated by a federal covered adviser by filing a notice of termination with the department.

5. Investment adviser representatives. It is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this chapter as an investment adviser representative or is exempt from registration as an investment adviser representative or that the investment adviser representative is employed by or associated with an investment adviser that is exempt from registration or a federal covered investment adviser that is excluded from the notice filing requirements.

Application for registration as an investment adviser representative must be submitted in writing or electronically in a form prescribed by the commissioner, be signed by the applicant and if applicable, by the investment adviser employing or proposing to employ the applicant, be duly verified by oath, be filed with the department, and contain information the commissioner determines to be necessary concerning the applicant.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register the applicant as an investment adviser representative unless the commissioner finds that the applicant is not of good business reputation; that the investment adviser named in the application is not a registered investment adviser; or the federal covered adviser named in the application has not made a notice filing with the commissioner, as required by subsection 4. When the commissioner has registered an applicant as an investment adviser representative, the commissioner shall immediately notify the investment adviser or the federal covered adviser, as applicable, of such registration.

Every registered investment adviser shall promptly notify the department of the termination of the employment by the adviser of a registered investment adviser representative. Every registered investment adviser representative employed by a federal covered adviser or the federal covered adviser shall promptly notify the department of the termination of such employment. The registration of the investment adviser representative is automatically

suspended from the time of termination of employment until such time as the representative is registered by the commissioner as a representative of another investment adviser or federal covered adviser.

The commissioner shall require as a condition of registration that the applicant pass a written examination as evidence of knowledge of the securities business and comply with any continuing education requirements as prescribed by the commissioner. At the discretion of the commissioner, certain professional designations may be accepted in lieu of an examination.

6. Refusal of registration. If the commissioner has reason to believe there are grounds to refuse the approval of any application under this section, the commissioner may, by order, summarily postpone the approval of any application made under this section. If, after affording an applicant a hearing or an opportunity for a hearing as provided in section 10-04-12, the commissioner finds that there is sufficient ground to refuse to register such applicant as provided in this section, the commissioner shall enter an order refusing to register such applicant. Such order shall state specifically the grounds for its issuance. A copy of such order must be mailed to the applicant at the applicant's business address, and if the application is for registration as an agent, to the registered broker-dealer or issuer or if the application is for registration as an investment adviser representative to the investment adviser or federal covered adviser who proposed to employ such applicant. If the commissioner finds that an applicant has been guilty of any act or omission which would constitute a sufficient ground for revocation of a broker-dealer's, agent's, investment adviser's, or investment adviser representative's registration under section 10-04-11, such act or omission may constitute a sufficient ground for a finding by the commissioner that such applicant is not of good business reputation.
7. Record and renewal of registrations. The names and addresses of all persons who have been registered as broker-dealers, agents, investment advisers, or investment adviser representatives, and all orders with respect thereto, and the names and addresses of all federal covered advisers who have made a notice filing must be recorded in a register of broker-dealers, agents, investment advisers, federal covered advisers, and investment adviser representatives in the office of the commissioner. Every registration and notice filing under this section expires on December thirty-first of each year, unless renewed. The commissioner may by order provide for expirations and renewals, including dates, forms, and procedures, adjust registration and notice filing fees to correspond with expiration dates, and do any other thing which may be necessary or convenient in order to participate in a central registration depository or any similar arrangement designed to promote uniformity, to ease regulatory burdens, or to encourage cooperation with other states, the securities and exchange commission, or any registered national securities association or exchange.
8. Fees. The fee, which must accompany the application, for registration, transfer, or notice filing, and for each annual renewal thereof is:
  - a. For each broker-dealer \$200.00
  - b. For each agent \$60.00
  - c. For each investment adviser or federal covered adviser \$100.00

- d. For each investment adviser representative \$50.00

An application to register as a broker-dealer, agent, investment adviser, or investment adviser representative may, with the consent of the commissioner, be withdrawn upon written application.

**SECTION 5. AMENDMENT.** Section 10-04-10.1 of the North Dakota Century Code is amended and reenacted as follows:

**10-04-10.1. Advisory activities.**

1. It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:
  - a. To employ any device, scheme, or artifice to defraud the other person; or
  - b. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.
2. It is unlawful for any person, in the solicitation of a client for investment advisory services, to make any false or misleading statement of material fact, or to fail to disclose a material fact.
3. It is unlawful for any person who provides investment advisory services subject to the provisions of this chapter to knowingly sell any security to or purchase any security from a client while acting for the person's own account or as a broker for another client unless the person first makes a written disclosure to the client of the capacity in which the person is acting and obtains the client's written consent to the transaction.
4. It is unlawful for any person who provides investment advisory services subject to the provisions of this chapter to engage in dishonest or unethical practices as the commissioner may define by rule.
5. It is unlawful for any investment adviser to enter, extend, or renew any investment advisory contract unless the investment advisory contract provides in writing that:
  - a. The investment adviser may not be compensated on the basis of a share of capital gains, earnings, or capital appreciation of the funds or any portion of the funds of the client. This subdivision does not prohibit an investment advisory contract that provides for compensation based on the total value of a fund determined as of a definite date or averaged as of definite dates or over a definite period. This subdivision does not prohibit an investment advisory contract that provides for performance fees permitted and determined in accordance with section 205 of the Investment Advisers Act of 1940 [Pub. L. 768; 54 Stat. 852; 15 U.S.C. 80b--5] and the rules adopted thereunder.
  - b. An assignment of the investment advisory contract may not be made by the investment adviser unless the investment adviser notifies the client of the intended assignment and obtains the prior written consent of the client.

- c. The investment adviser shall provide written notice to the client within fifteen days of any change of ownership in excess of five percent.
  - d. The investment adviser shall provide written notice to the client within fifteen days of a change of controlling interest of the investment adviser. The client may terminate the investment advisory contract without penalty by providing a written notice to the investment adviser within thirty days after the client's receipt of the notice of change of controlling interest.
6. Client securities or funds must be maintained by a qualified custodian. It is unlawful for any investment adviser to take or have custody of any securities or funds of any client unless the investment adviser acts as a fiduciary pursuant to duties as an executor, guardian, conservator, receiver, or trustee.
7. "Custody" means holding directly or indirectly, client funds or securities, or having any authority to obtain possession or having the ability to appropriate funds or securities. The investment adviser has custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of funds or securities, in connection with advisory services the investment adviser provides to clients.
- a. Custody includes:
- (1) Possession of client funds or securities unless the investment adviser receives the funds or securities inadvertently and returns the funds or securities to the sender within three business days of receiving the funds or securities and the investment adviser maintains the records required under section 10-04-10.3.
  - (2) Any arrangement, including a general power of attorney, under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and
  - (3) Any capacity, such as general partner of a limited partnership, managing member of a limited liability company or a comparable position or another type of pooled investment vehicle, or trustee of a trust, that gives the investment adviser or its supervised person legal ownership of or access to client funds or securities.
- b. Receipt of checks drawn by clients and made payable to third parties does not meet the definition of custody if forwarded to the third party within three business days of receipt and the investment adviser maintains the records required under section 10-04-10.3.
8. Qualified custodian means the following:
- a. A depository institution;
  - b. A broker-dealer registered in this jurisdiction and with the securities and exchange commission holding the client assets in customer accounts;
  - c. A registered futures commission merchant registered under section 4f(a) of the Commodity Exchange Act [7 U.S.C. 1 et seq.], holding the client assets in customer accounts, but only with respect to client funds and

security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options; and

- d. A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

**SECTION 6. AMENDMENT.** Section 10-04-10.3 of the North Dakota Century Code is amended and reenacted as follows:

**10-04-10.3. Postregistration provisions.**

1. Every broker-dealer, agent, investment adviser, and investment adviser representative conducting business in this state shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as described below:
  - a. With the exclusion of a broker-dealer whose activities are limited to the sale of securities that it issues and who is not a member or required to be a member of any self-regulatory organization, every broker-dealer registered in or conducting business in this state, and each branch office located in or conducting business in this state, must keep and maintain all records as required by:
    - (1) Federal statutes or by rules or regulations promulgated by the securities and exchange commission.
    - (2) Rules promulgated by any securities exchange or self-regulatory organization of which the broker-dealer is a member.
    - (3) The laws, rules, or regulations of any state in which the broker-dealer is registered or maintains a place of business from which it conducts securities business in North Dakota.
  - b. Every investment adviser which maintains its principal place of business in any state, other than this state, and is registered as an investment adviser in the state in which it maintains its principal place of business, shall keep and maintain such books and records as required by the state in which it maintains its principal place of business.
  - c. Every investment adviser which maintains its principal place of business in this state, or is not registered or exempt from registration in the state in which it maintains its principal place of business, shall keep and maintain the following books and records for a period of three years:
    - (1) Financial documents of the investment adviser which shall include:
      - (a) Journals and ledgers tracking income and expenses of the investment adviser. These documents must be continually maintained to within thirty days of current.
      - (b) Trial balances, financial statements, and internal audit papers.

- (c) Checkbooks and statements on any type of account on which the investment adviser has check-writing privileges.
  - (d) Statements regarding any account of the investment adviser with any insurance company, broker-dealer, investment adviser, federal covered adviser, or financial institution.
- (2) A file which contains copies of all incoming and outgoing correspondence between the investment adviser or its representative and any of its customers, prospective customers, or former customers.
  - (3) A file containing a copy of each customer complaint against the investment adviser or a representative of the investment adviser.
  - (4) A file containing all advertisements used by the investment adviser or a representative of the investment adviser. To the extent that past performance of the investment adviser is used in advertising materials, the investment adviser shall maintain all accounts, records, and internal working papers that form the basis of the performance of the investment adviser.
  - (5) Copies of all contracts between the investment adviser and its customers.
  - (6) A manual regarding the supervisory procedures of the investment adviser, unless the investment adviser is wholly owned by the only representative of the investment adviser and the investment adviser has no employees.
  - (7) With respect to discretionary accounts:
    - (a) A list of all discretionary accounts.
    - (b) A file containing all discretionary trading agreements.
    - (c) A list of all trades that were conducted on a discretionary basis.
  - (8) All records created by the investment adviser or provided by a client or prospective client of an investment adviser regarding the financial condition of the client or prospective client.
  - (9) Records tracking all securities purchased by or advice provided by the investment adviser and the payment for the services if any. These records shall disclose whether the investment adviser or the investment adviser representative had any direct or indirect beneficial interest in the investment involved.
  - (10) ~~An updated~~ A copy of part H2 of the form ADV, annually updated and filed with the department, and a summary of all material updates changes to the same part 1 and part 2 of form ADV, as required to be filed with the department within ninety days of the material change.
  - (11) A list of all parties to whom referral fees have been paid and the amount of money paid to each such person.

- (12) A listrecord containing the date of receipt and date of transmission of ~~each customer check~~funds provided to the investment adviser for the purpose of deposit with the custodian of the investment adviser. Copies of each of the any checks or electronic transfer instructions, must be maintained with the listrecord.

All records required to be maintained pursuant to subdivision a or b must be preserved as set forth in the rules or regulations of the jurisdiction originating the recordkeeping requirement. The commissioner may by rule enhance or waive the requirements of this subsection.

It is a violation of this subsection for any person who is registered, required to be registered, or is affiliated with or employed by any such entity, to create or cause to be created any record discussed in this subsection, if such record contains a material misstatement or misrepresentation regarding a customer or a customer's investments and the person knew or should have known of the falsity of the information or acted in reckless disregard of the truthfulness of the information.

2. Every registered broker-dealer, agent, investment adviser, and investment adviser representative shall file such financial reports as the commissioner prescribes by rule.
3. If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment.
4. All the records of any registered person are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the commissioner, within or outside this state, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, if deemed practicable in administering this subsection, may cooperate with the securities administrators of other states, the securities and exchange commission, any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or any other jurisdiction, agency, or organization charged by law or statute with regulating or prosecuting any aspect of the securities business, and in so cooperating may share any information obtained as a result of any investigation or examination.
5. The commissioner and the commissioner's representatives may copy records or require a registrant to copy records and provide the copies to the commissioner and the commissioner's representatives to the extent and in a manner reasonable under the circumstances.

**SECTION 7. AMENDMENT.** Subsection 1 of section 10-04-16 of the North Dakota Century Code is amended and reenacted as follows:

1. Issue any order, including cease and desist, rescission, stop, and suspension orders, which the commissioner deems necessary or appropriate in the public interest or for the protection of investors. An order of the commissioner is effective upon issuance. The commissioner may, in addition to any other remedy authorized by this chapter, impose by order and collect a civil penalty against any person found in an administrative action to have violated any

provision of this chapter, or any rule or order adopted or issued under this chapter, in an amount not to exceed ten thousand dollars for each violation. The commissioner may bring actions to recover penalties pursuant to this section in district court. A person aggrieved by an order issued pursuant to this subsection may request a hearing before the commissioner if a written request is made within fifteen days after receipt of the order. If a request for hearing is made under this subsection, the commissioner shall schedule a hearing within a reasonable time. Subsections 3 and 4 of section 10-04-12 apply to any hearing conducted under this subsection. If, after a hearing, the commissioner sustains an order previously issued, the sustaining order is subject to appeal to the district court of Burleigh County according to the procedures set forth in chapter 28-32. Any order issued under this subsection is a final order if it is properly served and no hearing was requested within the required timeline. If an order issued under this subsection is sustained or modified after a hearing held in accordance with section 10-04-12, the order sustaining or modifying that order is a final order. If the final order is not appealed in accordance with the procedures set forth in chapter 28-32 or if the final order is sustained on appeal, the securities department may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

**SECTION 8. AMENDMENT.** Subsection 1 of section 10-04-16.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The department may:
  - a. Make such public or private investigations within or outside of this state as deemed necessary to determine whether any person has violated, is violating, or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder.
    - (1) For the purposes of this section, an investigation may include an examination of the books and records of any person registered under the provisions of this chapter. In the discretion of the commissioner, the expense reasonably attributed to an investigation under this section must be paid by the broker-dealer, agent, investment adviser, or investment adviser representative whose affairs are investigated.
    - (2) No person is liable to a broker-dealer, agent, investment adviser, federal covered adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required or requested by the securities department pursuant to this subsection or required to be maintained under section 10-04-10.3, unless the person knew, or should have known at the time the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.
    - (3) Professional services contracted and rendered under this section are exempt from chapter 54-44.4.
  - b. Require or permit any person to file a statement in writing, under oath or otherwise, as to all the facts and circumstances concerning the matter to be investigated.

- c. Publish information concerning any violation of this chapter or any rule or order hereunder and may keep confidential the information or documents obtained or prepared in the course of any investigation conducted under this section but only during an active and ongoing investigation. If an investigation under this section extends beyond six months, the commissioner shall, upon a request by any party, state in writing that the need for confidentiality still exists, the general reason why the need exists, and the date, as can best be determined at the time, when the need for confidentiality will cease.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 102

### HOUSE BILL NO. 1371

(Representatives Thomas, D. Anderson, Fisher, Hagert, Headland, Lefor)  
(Senators Conley, Hogue, Luick, Wanzek)

AN ACT to create and enact four new sections to chapter 10-06.1 of the North Dakota Century Code, relating to authorized livestock farm corporation and authorized livestock farm limited liability company requirements, and initial and annual reporting requirements for authorized livestock farm corporations, and authorized livestock farm limited liability companies; to amend and reenact sections 10-06.1-01, 10-06.1-02, 10-06.1-03, 10-06.1-04, 10-06.1-05, 10-06.1-06, 10-06.1-07, and 10-06.1-08, subsection 1 of section 10-06.1-09, and sections 10-06.1-10, 10-06.1-11, 10-06.1-12, 10-06.1-13, 10-06.1-14, 10-06.1-15, 10-06.1-16, 10-06.1-17, 10-06.1-18, 10-06.1-19, 10-06.1-20, 10-06.1-21, 10-06.1-22, 10-06.1-23, 10-06.1-24, 10-06.1-25, 10-06.1-26, and 10-06.1-27 of the North Dakota Century Code, relating to agricultural definitions, ownership exceptions for beekeeping, agriculture support services, livestock backgrounding and feedlot operations, raising or producing of livestock by persons that have limited landholdings, and required reporting for corporate farming; to provide a penalty; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 10-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **10-06.1-01. Definitions.**

For the purposes of this chapter, unless the language or context clearly indicates that a different meaning is intended:

1. "Agricultural support services" means the business of providing aerial or surface application services for others of seed, fertilizer, pesticides, or soil amendments, or the business of custom harvesting.
2. "Aquaculture" means the breeding, growing, or harvesting of fish or the growing of aquatic plants or crops.
3. "Authorized livestock farm corporation" means a corporation, joint-stock company or association formed for livestock backgrounding, livestock finishing, or the production of poultry or poultry products, milk or dairy products, or swine or swine products which is allowed to engage in the business of farming or ranching under section 13 of this Act, which, at all times, complies with the requirements of this chapter.
4. "Authorized livestock farm limited liability company" means a limited liability company formed for livestock backgrounding, livestock finishing, or the production of poultry or poultry products, milk or dairy products, or swine or swine products which is allowed to engage in the business of farming or ranching under section 13 of this Act, which, at all times, complies with the requirements of this chapter.

5. "Beekeeping" means the breeding or rearing of bee colonies or the owning, maintenance, or management of bee apiaries.
6. "Custom harvesting" means the business of providing crop harvesting services for others.
7.
  - a. "Farming or ranching" means cultivating land for production of agricultural crops or livestock, or the raising or producing of agricultural crops, fruit, horticultural products, or livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit or horticultural products. It or livestock backgrounding, or livestock finishing.
  - b. The term does not include:
    - (1) Agricultural support services;
    - (2) Aquaculture or greenhouse agriculture by a person that has farmland or ranchland holdings not exceeding forty acres [16.19 hectares];
    - (3) Beekeeping;
    - (4) The production of timber or forest products, the;
    - (5) The growing or processing of marijuana under chapter 19-24.1; or a
    - (6) A contract whereby under which a processor or distributor of farm products or supplies provides grain, harvesting, or other farm services.
- 2-8. "Farming or ranching corporation" means a farm or ranch corporation, joint-stock company, or association which is allowed to engage in the business of farming or ranching under section 10-06.1-12, which, at all times, complies with the requirements of this chapter.
- 3-9. "Farming or ranching limited liability company" means a farm or ranch limited liability company which is allowed to engage in the business of farming or ranching under section 10-06.1-12, which, at all times, complies with the requirements of this chapter.
10. "Farmland or ranchland" means agricultural land in this state used for farming or ranching.
11. "Greenhouse agriculture" means the growing of plants or crops primarily under a controlled environment in a sheltered structure with walls and a roof, both made primarily of transparent or translucent material.
- 4-12. "Livestock" includes beef cattle, dairy cattle, elk, bison, poultry, swine, sheep, goats, llamas, and alpacas.
13. "Livestock backgrounding" means the feeding or growing of livestock from weaning until the livestock enter a livestock finishing feedlot or facility.
14. "Livestock finishing" means the feeding or growing of livestock for the purpose of expeditiously preparing the livestock for harvest.

15. "Nonprofit organization" means an organization or trust that has tax-exempt status under at least one of the following sections of the Internal Revenue Code:

- a. An organization that was in existence on December 31, 1984, and that is organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals under section 501(c)(3), or is a domestic fraternal organization under section 501(c)(10).
- b. A charitable, religious, educational, or scientific organization classified as either a private foundation or as a public charity having status as an organization described in section 509(a)(1) or (3).
- c. A trust described in section 4947 for which a deduction is allowable under section 170.

5-16. "Operating the farm or ranch" means engaging in personal labor or management activities on or off the farm or ranch, which contribute to the farm or ranch operations.

**SECTION 2. AMENDMENT.** Section 10-06.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-02. Farming or ranching by corporations and limited liability companies prohibited.**

1. All corporations and limited liability companies, except as otherwise provided in this chapter, are prohibited from owning or leasing ~~land used for farming or ranching farmland or ranchland~~ and from engaging in the business of farming or ranching.
2. A corporation or a limited liability company may be a partner in a partnership that ~~is under title 45 which owns or leases farmland or ranchland or engages in the business of farming or ranching~~ only if that corporation or limited liability company complies with this chapter.
3. ~~Notwithstanding any other provision of law, an authorized livestock farm corporation or authorized livestock farm limited liability company may not be a partner in a partnership under title 45 which owns or leases farmland or ranchland or engages in the business of farming or ranching.~~

**SECTION 3. AMENDMENT.** Section 10-06.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-03. Retention of mineral interests prohibited.**

For land and minerals acquired after July 1, 1985, any corporation or limited liability company that acquires mineral interests through foreclosure or in lieu of foreclosure which were not specifically valued at the time the security interest in the minerals was acquired, and which is prohibited from owning or leasing ~~land used in farming or ranching farmland or ranchland~~, is prohibited from retaining mineral interests in ~~land used for farming or ranching farmland or ranchland~~ when the corporation or limited liability company divests itself of the land, and the mineral interests must be passed with the surface estate of the land when the corporation or limited liability company divests itself of the land under this chapter.

**SECTION 4. AMENDMENT.** Section 10-06.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-04. Conversion of corporations.**

1. A business corporation regulated under chapter 10-19.1 may convert to a farming or ranching corporation or an authorized livestock farm corporation by adopting an amendment to its articles of incorporation or by applying for an amended certificate of authority which specifies that the corporation elects to be subject to this chapter and by complying with all requirements of this chapter. The amendment must be filed with the secretary of state with the prescribed fee and with the initial report required by section 10-06.1-15 or section 18 of this Act.
2. A farming or ranching corporation or an authorized livestock farm corporation may convert to a business corporation by adopting an amendment to its articles of incorporation or by applying for an amended certificate of authority. The amendment must be filed with the secretary of state with the prescribed fee. The amendment must be accompanied by a report outlining the information, as of the date of the amendment, which is required under section 10-06.1-17 or section 21 of this Act, and the manner in which the corporation has divested itself of its owned or leased land holdings and its business of farming or ranching.

**SECTION 5. AMENDMENT.** Section 10-06.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-05. Conversion of limited liability company.**

1. A business limited liability company regulated under chapter 10-32.1 may convert to a farming or ranching limited liability company or an authorized livestock farm limited liability company by adopting an amendment to its articles of organization or by applying for an amended certificate of authority which specifies that the limited liability company elects to be subject to this chapter and by complying with all requirements of this chapter. The amendment must be filed with the secretary of state with the prescribed fee and with the initial report required by section 10-06.1-15 or section 18 of this Act.
2. A farming or ranching limited liability company or an authorized livestock farm limited liability company may convert to a business limited liability company by adopting an amendment to its articles of organization or by applying for an amended certificate of authority. The amendment must be filed with the secretary of state with the prescribed fee. The amendment must be accompanied by a report outlining the information, as of the date of the amendment, which is required under section 10-06.1-17 or section 21 of this Act, and the manner in which the limited liability company has divested itself of its owned or leased land holdings and its business of farming or ranching.

**SECTION 6. AMENDMENT.** Section 10-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-06. Surface coal mining - Exception.**

A corporation or limited liability company not engaged in the business of farming or ranching may own or lease ~~lands used for farming or ranching~~ farmland or

~~the~~ ranchland, when the business of ~~such a~~ the corporation or limited liability company is the conducting of surface coal mining operations or related energy conversion, and when the owning or leasing of ~~lands used for farming or ranching~~ farmland or ranchland is reasonably necessary in the conduct of the business of surface coal mining or related energy conversion. When the necessity for owning or leasing of ~~lands used for farming or ranching~~ farmland or ranchland no longer exists, the exception provided in this section ceases and the corporation or limited liability company owning or leasing ~~such~~ the lands is subject to this chapter.

**SECTION 7. AMENDMENT.** Section 10-06.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-07. Industrial and business purpose exception- ~~Exception.~~**

A corporation or limited liability company that is not engaged in the business of farming or ranching may own or lease ~~land used for farming or ranching~~ farmland or ranchland when the land is necessary for residential or commercial development; the siting of buildings, plants, facilities, industrial parks, or similar business or industrial purposes of the corporation or limited liability company; or for uses supportive of or ancillary to adjacent ~~nonagricultural land that is not~~ farmland or ranchland for the benefit of both land parcels. The farmland or ranchland while not being immediately used for any purpose of the corporation or limited liability company must be available to be leased by persons who farm or ranch as sole proprietorships or partnerships, or by ~~farming or ranching~~ corporations or farming or ranching limited liability companies ~~allowed to engage in farming or ranching under section 10-06.1-12.~~

**SECTION 8. AMENDMENT.** Section 10-06.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-08. Cooperative corporations allowed to engage in the business of farming or ranching - Requirements.**

This chapter does not prohibit cooperative corporations, seventy-five percent of whose members or shareholders are actual farmers or ranchers residing on farms or ranches or depending principally on farming or ranching for their livelihood, from acquiring ~~real estate~~ farmland or ranchland and engaging in ~~the business of~~ cooperative farming or ranching.

**SECTION 9. AMENDMENT.** Subsection 1 of section 10-06.1-09 of the North Dakota Century Code is amended and reenacted as follows:

1. A nonprofit organization or a trust for the benefit of an individual or a class of individuals related within the degrees of kinship specified in subsection 2 of section 10-06.1-12 may own or lease farmland or ranchland if that land is leased to a person who farms or ranches the land as a sole proprietorship or partnership, or a ~~farming or ranching~~ corporation or a farming or ranching limited liability company ~~allowed to engage in farming or ranching under section 10-06.1-12.~~

**SECTION 10. AMENDMENT.** Section 10-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-10. Acquisition of certain farmland or ranchland by certain nonprofit organizations.**

A nonprofit organization may acquire farmland or ranchland only in accordance with the following:

1. Unless it is permitted to own or lease farmland or ranchland under section 10-06.1-09, the nonprofit organization must have been either incorporated in this state or issued a certificate of authority to do business in this state before January 1, 1985, or, before January 1, 1987, have been incorporated in this state if the nonprofit organization was created or authorized under Public Law No. 99-294 [100 Stat. 418]. A nonprofit organization created or authorized under Public Law No. 99-294 [100 Stat. 418] may acquire no more than twelve thousand acres [4856.228 hectares] of land from interest derived from state, federal, and private sources held in its trust fund.
2. The ~~land~~ farmland or ranchland may be acquired only for the purpose of conserving natural areas and habitats for biota, and, after acquisition:
  - a. The land must be maintained and managed for the purpose of conserving natural area and habitat for biota.
  - b. Any agricultural use of the land is in accordance with the management of the land for conservation and agricultural use, and is by a sole proprietorship or partnership, or a farming or ranching corporation or a farming or ranching limited liability company ~~allowed to engage in farming or ranching under section 10-06.1-12.~~
  - c. If any parcel of the land is open to hunting, it must be open to hunting by the general public.
  - d. The nonprofit organization must fully comply with all state laws relating to the control of noxious and other weeds and insects.
  - e. The nonprofit organization must make payments in lieu of property taxes on the property, calculated in the same manner as if the property was subject to full assessment and levy of property taxes.
  - f. All property subject to valuation must be assessed for the purpose of making the payments under subdivision e in the same manner as other real property in this state is assessed for tax purposes. Before June thirtieth of each year, the county auditor of any county in which property subject to valuation is located shall give written notice to the nonprofit organization and the tax commissioner of the value placed by the county board of equalization upon each parcel of property subject to valuation in the county.
3. a. Before farmland or ranchland may be purchased by a nonprofit organization for the purpose of conserving natural areas and habitats for biota, the governor must approve the proposed acquisition.
  - b. A nonprofit organization that desires to purchase farmland or ranchland for the purpose of conserving natural areas and habitats for biota shall first submit a proposed acquisition plan to the agriculture commissioner who shall convene an advisory committee consisting of the director of the parks and recreation department, the agriculture commissioner, the state forester, the director of the game and fish department, the president of the North Dakota farmers union, the president of the North Dakota farm bureau, the president of the North Dakota stockmen's association, and the chairman of the county commission of any county affected by the acquisition, or their designees.

- c. The advisory committee shall hold a public hearing with the board of county commissioners concerning the proposed acquisition plan and shall make recommendations to the governor within forty-five days after receipt of the proposed acquisition plan.
  - d. The governor shall approve or disapprove any proposed acquisition plan, or any part thereof, within thirty days after receipt of the recommendations from the advisory committee.
4. Land acquired in accordance with this section may not be conveyed to the United States or any agency or instrumentality of the United States.
  5. On failure to qualify to continue ownership under subsection 2, the land must be disposed of within five years of that failure to qualify.

**SECTION 11. AMENDMENT.** Section 10-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-11. Required nonprofit organization divestiture of agricultural landfarmland or ranchland.**

In addition to the divestiture requirements of sections 10-06.1-10 and 10-06.1-24, a nonprofit ~~corporation~~organization that acquires ~~landfarmland or ranchland~~ by gift or devise after December 31, 1984, the ownership of which is not permitted under this chapter, shall divest itself of the land within ten years after the acquisition. For purposes of this section, "ownership" means holding either fee or equitable title, unless fee title is held solely as security for payment of the purchase price, or unless fee title does not carry with it the right to immediate possession of the property. If the ~~corporation~~organization fails to divest itself of the land within the required time, the attorney general shall take action under section 10-06.1-24.

**SECTION 12. AMENDMENT.** Section 10-06.1-12 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-12. ~~Corporation~~Farming or ranching corporation or farming or ranching limited liability company allowed to engage in the business of farming or ranching - Requirements.**

This chapter does not prohibit a farming or ranching corporation or a farming or ranching limited liability company from owning ~~real estate~~or leasing farmland or ranchland and engaging in the business of farming or ranching, if the corporation meets all the requirements of chapter 10-19.1 or the limited liability company meets all the requirements of chapter 10-32.1 which are not inconsistent with this chapter. The following requirements also apply:

1. a. If a farming or ranching corporation, the corporation must not have more than fifteen shareholders.
  - b. If a farming or ranching limited liability company, the limited liability company must not have more than fifteen members.
2. Each shareholder or member must be related to each of the other shareholders or members within one of the following degrees of kinship or affinity: parent, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, brother, sister, uncle, aunt, nephew, niece, great-grandparent,

great-grandchild, first cousin, second cousin, or the spouse or surviving spouse of a person so related.

3. Each shareholder or member must be an individual or one of the following:
  - a. A trust for the benefit of an individual or a class of individuals who are related to every shareholder of the corporation or member of the limited liability company within the degrees of kinship or affinity specified in this section.
  - b. An estate of a decedent who was related to every shareholder of the corporation or member of the limited liability company within the degrees of kinship or affinity specified in this section.
4. A trust or an estate may not be a shareholder or member if the beneficiaries of the trust or the estate together with the other shareholders or members are more than fifteen in number.
5. Each individual who is a shareholder or member must be a citizen of the United States or a permanent resident alien of the United States.
6.
  - a. If a farming or ranching corporation, the officers and directors of the corporation must be shareholders who are actively engaged in operating the farm or ranch ~~and at least one of the corporation's shareholders must be an individual residing on or operating the farm or ranch.~~
  - b. If a farming or ranching limited liability company, the ~~governors and~~ managers, and members authorized under a statement of authority of the limited liability company must be members who are actively engaged in operating the farm or ranch ~~and at least one of its members must be an individual residing on or operating the farm or ranch.~~
7. An annual average of at least sixty-five percent of the gross income of the farming or ranching corporation or farming or ranching limited liability company over the previous five years, or for each year of its existence, if less than five years, must have been derived from engaging in the business of farming or ranching operations.
8. The income of the farming or ranching corporation or farming or ranching limited liability company from nonfarm rent, nonfarm royalties, dividends, interest, and annuities cannot exceed twenty percent of the gross income of the corporation or limited liability company.
9. The farming or ranching corporation or farming or ranching limited liability company must own or lease farmland or rangeland ~~in this state~~.

**SECTION 13.** A new section to chapter 10-06.1 of the North Dakota Century Code is created and enacted as follows:

**Authorized livestock farm corporation or authorized livestock farm limited liability company allowed to engage in the business of farming or ranching - Requirements.**

This chapter does not prohibit an authorized livestock farm corporation or an authorized livestock farm limited liability company from owning or leasing farmland or rangeland and engaging in the business of farming or ranching if the authorized

livestock farm corporation meets all the requirements of chapter 10-19.1 or the authorized livestock farm limited liability company meets all the requirements of chapter 10-32.1 which are not inconsistent with this chapter. The following requirements also apply:

1.
  - a. If an authorized livestock farm corporation, the corporation may not have more than ten shareholders.
  - b. If an authorized livestock farm limited liability company, the limited liability company may not have more than ten members.
2.
  - a. If an authorized livestock farm corporation, shareholders holding seventy-five percent or more of the shares entitled to vote and the shares entitled to distributions must be individuals who are actively engaged in the business of farming or ranching, farming or ranching corporations, or farming or ranching limited liability companies.
  - b. If an authorized livestock farm limited liability company, members holding fifty-one percent or more of interests entitled to vote and interests entitled to distributions in the limited liability company must be individuals who are actively engaged in the business of farming or ranching, farming or ranching corporations, or farming or ranching limited liability companies.
3.
  - a. If an authorized livestock farm corporation:
    - (1) All shareholders who are individuals must be citizens of the United States, permanent resident aliens of the United States, or an authorized individual under section 47-10.1-02.
    - (2) All shareholders that are persons otherwise eligible under this chapter, and any controlling individual or entity of the person, must be organized in the United States and one hundred percent of the stock must be owned by citizens of the United States, permanent resident aliens of the United States, or an authorized individual under section 47-10.1-02.
  - b. If an authorized livestock farm limited liability company:
    - (1) All members who are individuals must be citizens of the United States, permanent resident aliens of the United States, or an authorized individual under section 47-10.1-02.
    - (2) All members that are persons otherwise eligible under this chapter, and any controlling individual or entity of the person, must be organized in the United States and one hundred percent of the interests must be owned by citizens of the United States, permanent resident aliens of the United States, or an authorized individual under section 47-10.1-02.
4. The authorized livestock farm corporation or authorized livestock farm limited liability company may not own, lease, or otherwise have an interest in more than one hundred sixty acres [64.75 hectares] of farmland or ranchland.
5.
  - a. If an authorized livestock farm corporation, none of its shareholders may hold direct or indirect interests in other authorized livestock farm corporations or in authorized livestock farm limited liability companies that

- in combination with the corporation own, lease, or otherwise have an interest in more than six hundred forty acres [259 hectares] of farmland or ranchland.
- b. If an authorized livestock farm limited liability company, none of its members may hold direct or indirect interests in other authorized livestock farm limited liability companies or in other authorized livestock farm corporations that in combination with the limited liability company own, lease, or otherwise have an interest in more than six hundred forty acres [259 hectares] of farmland or ranchland.
  - c. This section does not restrict the number of acres [hectares] of farmland or ranchland directly owned or leased by shareholders or members who are individuals, farming or ranching corporations, farming or ranching limited liability companies, or partnerships that meet the requirements of subsection 2 of section 10-06.1-02.
6. a. If an authorized livestock farm corporation, the officers and directors of the corporation must be shareholders who are individuals and who are actively engaged in operating the corporation.

b. If an authorized livestock farm limited liability company, the governors, managers, and members authorized under a statement of authority, must be members who are individuals and who are actively engaged in operating the limited liability company.
  7. An annual average of at least sixty-five percent of the gross income of the authorized livestock farm corporation or authorized livestock farm limited liability company over the previous five years, or for each year of its existence, if less than five years, must have been derived from livestock backgrounding, livestock finishing, or the production of poultry or poultry products, milk or dairy products, or swine or swine products.
  8. The income of the authorized livestock farm corporation or authorized livestock farm limited liability company from nonfarm rent, nonfarm royalties, dividends, interest, and annuities may not exceed twenty percent of the gross income of the authorized livestock farm corporation or authorized livestock farm limited liability company.
  9. The authorized livestock farm corporation or authorized livestock farm limited liability company may not engage in the production of crops or the grazing of livestock on farmland or ranchland.
  10. If the authorized livestock farm corporation or authorized livestock farm limited liability company is intended to primarily comprise an animal feeding operation or concentrated animal feeding operation on farmland or ranchland, the corporation or limited liability company must:

    - a. Begin construction of the facilities used in the animal feeding operation or concentrated animal feeding operation within one year of obtaining the agricultural landholding; and
    - b. Have a fully operational animal feeding operation or concentrated animal feeding operation within six years of obtaining the farmland or ranchland.

11. An authorized livestock farm corporation or limited liability company violating this section, or which is inactive for three consecutive years as determined by the agriculture commissioner, is subject to the divestment provisions of section 10-06.1-24.

**SECTION 14. AMENDMENT.** Section 10-06.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-13. Applicability of North Dakota Business Corporation Act.**

Chapter 10-19.1 is applicable to farming or ranching corporations and authorized livestock farm corporations, which have the powers and privileges and are subject to the duties, restrictions, and liabilities of other business corporations except when inconsistent with the intent of this chapter. This chapter takes precedence in the event of any conflict with the provisions of chapter 10-19.1.

<sup>68</sup> **SECTION 15. AMENDMENT.** Section 10-06.1-14 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-14. Applicability of North Dakota limited liability company laws.**

Chapter 10-32.1, ~~except those sections which pertain to foreign limited liability companies,~~ is applicable to farming or ranching limited liability companies and authorized livestock farm limited liability companies, which have the powers and privileges and are subject to the duties, restrictions, and liabilities of other business limited liability companies, except when inconsistent with the intent of this chapter. This chapter takes precedence in the event of any conflict with the provisions of chapter 10-32.1.

**SECTION 16. AMENDMENT.** Section 10-06.1-15 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-15. Initial report - ~~Shareholder~~Farming or ranching corporation shareholder and farming or ranching limited liability member requirements.**

1. Every farming or ranching corporation or farming or ranching limited liability company shall file an initial report with its articles of incorporation, articles of organization, or certificate of authority. The report must be signed by the incorporators or organizers or, in the case of a certificate of authority, an authorized person, and must contain the following:
  - a. The name of the farming or ranching corporation or farming or ranching limited liability company.
  - b. With respect to each shareholder or member:
    - (1) The name and address of each, including the names and addresses and relationships of trusts and estates that own shares or membership interests;
    - (2) The number of shares or membership interests or percentage of shares or membership interests owned by each;
    - (3) The relationship of each;

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<sup>68</sup> Section 10-06.1-14 was also amended by section 1 of House Bill No. 1084, chapter 103.

- (4) A statement of whether each is a citizen or permanent resident alien of the United States; and
  - (5) A statement of whether each will be actively engaged in operating the farm or ranch ~~and whether each will reside on the farm or ranch.~~
- c. With respect to management:
- (1) If a farming or ranching corporation, ~~then~~ the names and addresses of the officers and members of the board of directors; or
  - (2) If a farming or ranching limited liability company, ~~then~~ the names and addresses of the managers, members authorized under a statement of authority, and members of the board of governors.
- d. If the purchase or lease of farmland or ranchland is final at the time of the initial report, a statement listing the acreage [hectarage] and location listed by section, township, range, and county of all ~~land in the state~~ farmland or ranchland owned or leased by the farming or ranching corporation or farming or ranching limited liability company ~~and used for farming or ranching~~. If the purchase or lease of farmland or ranchland is not yet final at the time of the initial report, a statement that there is a bona fide and imminent intent and a plan to purchase or lease farmland or ranchland ~~in the state~~.
- e. A statement that at least sixty-five percent of the gross income of the farming or ranching corporation or farming or ranching limited liability company will be derived from engaging in the business of farming or ranching operations, and that twenty percent or less of the gross income of the corporation or limited liability company will be from nonfarm rent, nonfarm royalties, dividends, interest, and annuities.
2. A farming or ranching corporation or a farming or ranching limited liability company may not commence farming or ranching in this state until the secretary of state has received and filed the articles of incorporation ~~or~~ articles of organization, or certificate of authority, and the initial report required ~~by~~ under this section.
3. The farming or ranching corporation or farming or ranching limited liability company shall furnish to the official county newspaper of each county or counties in which ~~any land~~ farmland or ranchland is owned or leased by the corporation or limited liability company a legal notice reporting the following:
- a. The name of the farming or ranching corporation or farming or ranching limited liability company and its shareholders or members as listed in the initial report.
  - b. A statement ~~to the effect that the~~ farming or ranching corporation or farming or ranching limited liability company has reported that it owns or leases ~~land used for farming or ranching~~ farmland or ranchland in the county and that a description of that land is available for inspection at the ~~secretary of state's office~~ office of the secretary of state.

**SECTION 17.** A new section to chapter 10-06.1 of the North Dakota Century Code is created and enacted as follows:

### **Applicability of restriction on alien ownership of land.**

The provisions of chapter 47-10.1 take precedence in the event of any conflict with this chapter.

**SECTION 18.** A new section to chapter 10-06.1 of the North Dakota Century Code is created and enacted as follows:

### **Initial report - Authorized livestock farm corporation shareholder and authorized livestock farm limited liability company member requirements.**

1. Every authorized livestock farm corporation or authorized livestock farm limited liability company shall file an initial report with its articles of incorporation, articles of organization, or certificate of authority. The report must be signed by the incorporators or organizers, or in the case of a certificate of authority, an authorized person, and must contain the following:
  - a. The name of the authorized livestock farm corporation or authorized livestock farm limited liability company.
  - b. With respect to each shareholder or member:
    - (1) The name and address of each;
    - (2) If a person other than an individual, the state of incorporation, organization, or domicile;
    - (3) The number of shares or membership interests or percentage of shares or membership interests of each;
    - (4) Each person's percentage of total shares entitled to vote or membership interests entitled to vote; and whether any voting agreement exists;
    - (5) Each person's percentage of total capital and financial interests;
    - (6) As to individuals, a statement of whether each is a citizen or permanent resident alien of the United States;
    - (7) As to individuals, a statement of whether each will be actively engaged in the business of farming or ranching; and
    - (8) As to a person other than an individual, a statement of whether the person, and any controlling person of the person, is incorporated in the United States and one hundred percent of the stock or interests is owned by citizens of the United States, permanent aliens of the United States, or individuals or persons in compliance with section 47-10.1-02.
  - c. With respect to management:
    - (1) If an authorized livestock farm corporation, the names and addresses of the officers and members of the board of directors, and a statement whether each will be actively engaged in the operation of the corporation; or

- (2) If an authorized livestock farm limited liability company, the names and addresses of the managers, members of the board of governors, and members authorized under a statement of authority, and a statement whether each will be actively engaged in the operation of the limited liability company.
- d. A statement that the authorized livestock farm corporation or authorized livestock farm limited liability company does not own, lease, or hold any interest in more than one hundred sixty acres [64.75 hectares] of farmland or ranchland.
- e. If the purchase or lease of farmland or ranchland is final at the time of the initial report, a statement listing the acreage [hectarage] and location listed by section, township, range, and county of all farmland or ranchland in which the authorized livestock farm corporation or authorized livestock farm limited liability company has an ownership, leasehold, or other interest. If the purchase or lease of farmland or ranchland is not final at the time of the initial report, a statement that there is a bona fide and imminent intent and a plan to purchase or lease farmland or ranchland.
- f. A statement that no shareholders or members hold a direct or indirect interest in other authorized livestock farm corporations or authorized livestock farm limited liability companies that in combination with the corporation or limited liability company own, lease, or hold any interest in more than six hundred forty acres [259 hectares] of farmland or ranchland. An interest disclosed under this subdivision does not include the number of acres of farmland or ranchland directly owned or leased by shareholders or members that are individuals, farming or ranching corporations, farming or ranching limited liability companies, or partnerships that meet the requirements of subsection 2 of section 10-06.1-02.
- g. A statement that at least sixty-five percent of the gross income of the authorized livestock farm corporation or authorized livestock farm limited liability company will be derived from authorized livestock farm operations, and that twenty percent or less of the gross income of the corporation or limited liability company will be from nonfarm rent, nonfarm royalties, dividends, interest, and annuities.
- h. A statement that the authorized livestock farm corporation or authorized livestock farm limited liability company will not engage in the production of crops or the grazing of livestock on farmland or ranchland.
- i. If the authorized livestock farm corporation facility or authorized livestock farm limited liability company facility is not operational, a statement as to the planned date of the commencement of facility operations.
2. An authorized livestock farm corporation or authorized livestock farm limited liability company may not commence farming or ranching in this state until the secretary of state has received and filed the initial report required by this section and the articles of incorporation, articles of organization, or certificate of authority.
3. The authorized livestock farm corporation or authorized livestock farm limited liability company shall furnish to the official county newspaper of each county

in which it has an interest in farmland or ranchland a legal notice reporting the following:

- a. The name of the authorized livestock farm corporation or authorized livestock farm limited liability company and its shareholders or members as listed in the initial report.
- b. A statement that the authorized livestock farm corporation or authorized livestock farm limited liability company has reported that it holds an interest in farmland or ranchland in the county, the use of the land, and that a description of that land is available for inspection at the office of the secretary of state.
- c. A statement that each of the shareholders of the authorized livestock farm corporation or members of the authorized livestock farm limited liability company do not hold a direct or indirect interest in authorized livestock farm corporations or authorized livestock farm limited liability companies that in aggregate, own, lease, or otherwise hold an interest in more than six hundred forty acres [259 hectares] of farmland or ranchland. An interest disclosed under this subdivision does not include the number of acres of farmland or ranchland directly owned or leased by shareholders or members that are individuals, farming or ranching corporations, farming or ranching limited liability companies, or partnerships that meet the requirements of subsection 2 of section 10-06.1-02.

**SECTION 19. AMENDMENT.** Section 10-06.1-16 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-16. Share and membership interest transfer records.**

1. a. Every corporation owning or leasing ~~land used for farming or ranching~~ farmland or ranchland or engaged in the business of farming or ranching ~~after June 30, 1981~~, shall keep a record of transfers of shares or transfers of interests in the corporation.
- b. Every limited liability company owning or leasing ~~land used for farming or ranching~~ farmland or ranchland or engaged in the business of farming or ranching shall keep a record of transfers of membership interests in the limited liability company.
2. a. If a corporation, the corporation's secretary shall cause to be recorded in the record all transfers of shares or transfers of interests among and between the corporation and its respective shareholders or holders of interest.
- b. If a limited liability company, the limited liability company's secretary shall cause to be recorded in the record all transfers of membership interests among and between the limited liability company and its respective members.
3. The record must contain at least the following: the names of the transferor and transferee, their relationship, the date of the transfer and, if a corporation, the number of shares or the percentage of interests transferred or, if a limited liability company, the number or percentage of membership interests transferred.

**SECTION 20. AMENDMENT.** Section 10-06.1-17 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-17. Annual report - Farming or ranching corporations and farming or ranching limited liability companies - Contents - Filing requirements.**

1. Except for the first annual report, the annual report of a farming or ranching corporation engaged in farming or ranching after June 30, 1981, and/or a farming or ranching limited liability company engaged in the business of farming or ranching must be delivered to the secretary of state before April sixteenth of each year. The first annual report must be delivered before April sixteenth in the year following the calendar year of the effective date of the articles of incorporation, articles of organization, or certificate of authority.
2. The annual report must be signed as provided in subsection 58 of section 10-19.1-01 if a farming or ranching corporation and subsection 49 of section 10-32.1-02 if a farming or ranching limited liability company, and submitted on a form prescribed by the secretary of state. If the corporation or limited liability company is in the hands of a receiver or trustee, it the annual report must be signed on behalf of the corporation or limited liability company by the receiver or trustee.
3. An annual report of the farming or ranching corporation or the farming or ranching limited liability company must include the following information with respect to the preceding calendar year:
  4. a. The name of the farming or ranching corporation or farming or ranching limited liability company.
  2. b. The name of the registered agent of the farming or ranching corporation or farming or ranching limited liability company as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of the registered office of the corporation or limited liability company in this state.
  3. c. With respect to each farming or ranching corporation:
    - a. (1) A statement of the aggregate number of shares the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
    - b. (2) 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.
  4. d. With respect to each farming or ranching limited liability company:
    - (1) A statement of the aggregate membership interests the limited liability company has authority to issue, itemized by classes and series, if any, within a class.
    - (2) A statement of the aggregate membership interests, itemized by classes and series, if any, within a class.
  - e. With respect to each shareholder or member:

- a. (1) The name and address of each, including the names and addresses and relationships of beneficiaries of trusts and estates which own shares or membership interests;
  - b. (2) The number of shares or membership interests or percentage of shares or membership interests owned by each;
  - e. (3) The relationship of each; and
  - d. (4) A statement of whether each is a citizen or permanent resident alien of the United States; and
  - e. ~~A statement of whether at least one is an individual residing on or operating the farm or ranch.~~
5. f. With respect to management:
- a. (1) If a farming or ranching corporation, ~~then~~ the name and address of each officer and member of the board of directors, and a statement of whether each is a shareholder actively engaged in operating the farm or ranch; or
  - b. (2) If a farming or ranching limited liability company, ~~then~~ the name and address of each manager and, member of the board of governors, and member authorized under a statement of authority, and a statement of whether each is a member actively engaged in operating the farm or ranch.
6. g. A statement providing the land description and listing the acreage [hectarage] and location listed by section, township, range, and county of ~~all land in the state~~ farmland or ranchland owned or leased by the farming or ranching corporation or farming or ranching limited liability company and used for farming or ranching. The statement must also designate which, if any, of the acreage [hectarage] is leased from or jointly owned with any shareholder or member and list the name of the shareholder or member with that acreage [hectarage].
7. h. A statement of the percentage of the annual average gross income of the farming or ranching corporation or farming or ranching limited liability company which has been derived from engaging in the business of farming or ranching operations over the previous five years or for each year of existence if less than five years.
8. i. A statement of the percentage of gross income of the farming or ranching corporation or farming or ranching limited liability company derived from nonfarm rent, nonfarm royalties, dividends, interest, and annuities during the period covered by the report.
- 9.4. A farming or ranching corporation engaged in the business of farming or ranching which fails to file an annual report is subject to the penalties for failure to file an annual report as provided in chapter 10-19.1, except that the penalties must be calculated from the date of the report required by under this section.

10-5. A farming or ranching limited liability company engaged in the business of farming or ranching which fails to file an annual report is subject to the penalties for failure to file an annual report as provided in chapter 10-32.1, except that the penalties must be calculated from the date of the report required by under this section.

**SECTION 21.** A new section to chapter 10-06.1 of the North Dakota Century Code is created and enacted as follows:

**Annual report - Authorized livestock farm corporations and authorized livestock farm limited liability companies - Contents - Filing requirements.**

1. Except for the first annual report, the annual report of an authorized livestock farm corporation or authorized livestock farm limited liability company must be delivered to the secretary of state before April sixteenth of each year. The first annual report must be delivered before April sixteenth in the year following the calendar year of the effective date of the articles of incorporation, articles of organization, or certificate of authority.
2. The annual report must be signed as defined in subsection 58 of section 10-19.1-01 if an authorized livestock farm corporation and subsection 49 of section 10-32.1-02 if an authorized livestock farm limited liability company and submitted on a form prescribed by the secretary of state. If the authorized livestock farm corporation or authorized livestock farm limited liability company is in the hands of a receiver or trustee, the annual report must be signed on behalf of the authorized livestock farm corporation or authorized livestock farm limited liability company by the receiver or trustee.
3. An annual report of the authorized livestock farm corporation or the authorized livestock farm limited liability company must include the following information with respect to the preceding calendar year:
  - a. The name of the authorized livestock farm corporation or authorized livestock farm limited liability company.
  - b. The name of the registered agent of the authorized livestock farm corporation or authorized livestock farm limited liability company as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of the registered office of the authorized livestock farm corporation or authorized livestock farm limited liability company in this state.
  - c. With respect to each authorized livestock farm corporation:
    - (1) A statement of the aggregate number of shares the authorized livestock farm corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
    - (2) 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.
  - d. With respect to each authorized livestock farm limited liability company:

- (1) A statement of the aggregate membership interests the authorized livestock farm limited liability company has authority to issue, itemized by classes and series, if any, within a class.
  - (2) A statement of the aggregate number of issued membership interests, itemized by classes and series, if any, within a class.
- e. With respect to each shareholder or member:
- (1) The name and address of each;
  - (2) If a person other than an individual, the state of incorporation, organization, or domicile;
  - (3) The number of shares or membership interests or percentage of shares or membership interests of each;
  - (4) Each person's percentage of total shares entitled to vote, or membership interests entitled to vote, and whether any voting agreement exists;
  - (5) Each person's percentage of total capital and financial interests;
  - (6) As to individuals, a statement of whether each is a citizen or permanent resident alien of the United States;
  - (7) As to individuals, a statement of whether each will be actively engaged in the business of farming or ranching; and
  - (8) As to persons other than an individual, a statement of whether the person, and any controlling person of the person, is incorporated or organized in the United States and one hundred percent of the stock or interests is owned by citizens of the United States, permanent resident aliens of the United States, or individuals or persons in compliance with section 47-10.1-02.
- f. With respect to management:
- (1) If an authorized livestock farm corporation, the names and addresses of the officers and members of the board of directors, and a statement whether each actively is engaged in the operation of the corporation; or
  - (2) If an authorized livestock farm limited liability company, the names and addresses of the managers and members of the board of governors, and a statement whether each actively is engaged in the operation of the limited liability company.
- g. A statement that the authorized livestock farm corporation or authorized livestock farm limited liability company does not own, lease, or hold any interest in more than one hundred sixty acres [64.75 hectares] of farmland or ranchland.
- h. A statement providing the farmland or ranchland description and listing the acreage [hectarage] and location listed by section, township, range, and

- county of all farmland or ranchland in which the authorized livestock farm corporation or authorized livestock farm limited liability company has an ownership, leasehold, or other interest.
- i. A statement that no shareholders or members hold a direct or indirect interest in other authorized livestock farm corporations or authorized livestock farm limited liability companies that in combination with the corporation or limited liability company own, lease, or hold any interest in more than six hundred forty acres [259 hectares] of farmland or ranchland. The interest disclosed under this subdivision does not include the number of acres [hectares] of farmland or ranchland directly owned or leased by shareholders or members who are individuals, farming or ranching corporations, farming or ranching limited liability companies, or partnerships that meet the requirements of subsection 2 of section 10-06.1-02.
  - j. A statement that the authorized livestock farm corporation or authorized livestock farm limited liability company does not engage in the production of crops or the grazing of livestock on farmland or ranchland.
  - k. The first date of livestock operations.
  - l. A statement of the percentage of the annual average gross income of the authorized livestock farm corporation or authorized livestock farm limited liability company which has been derived from authorized livestock farm operations over the previous five years or for each year of existence if less than five years.
  - m. A statement of the percentage of gross income of the authorized livestock farm corporation or authorized livestock farm limited liability company derived from nonfarm rent, nonfarm royalties, dividends, interest, and annuities during the period covered by the report.
4. An authorized livestock farm corporation engaged in authorized livestock farm operations that fails to file an annual report is subject to the penalties for failure to file an annual report as provided in chapter 10-19.1, except the penalties must be calculated from the date of the report required under this section.
5. An authorized livestock farm limited liability company engaged in authorized livestock farm operations that fails to file an annual report is subject to the penalties for failure to file an annual report as provided in chapter 10-32.1, except the penalties must be calculated from the date of the report required under this section.

**SECTION 22. AMENDMENT.** Section 10-06.1-18 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-18. Reports of corporations and limited liability companies not engaged in farming or ranching.**

Any business or nonprofit corporation and any, limited liability company, or nonprofit organization not engaged in the business of farming or ranching which owns or leases a tract of land used for farming or ranching farmland or ranchland which is larger than twenty acres [8.09 hectares] in size shall file with the attorney general, within twelve months of any transaction involving the purchase, sale, or surface

leasing of ~~such~~the farmland or ranchland by that corporation or limited liability company, a report containing all of the following information:

1. The name of the corporation or limited liability company and its place of incorporation or organization and, if a nonprofit ~~corporation~~organization, a copy of its section 501(c)(3) exemption letter from the internal revenue service.
2. The name of the registered agent of the corporation or limited liability company as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of the noncommercial registered agent in this state.
3. The acreage [hectarage] and location listed by section, township, range, and county of all ~~such land in the state~~the farmland or ranchland owned or leased by the corporation or limited liability company ~~and used for farming or ranching.~~
4. The date and method of acquisition or disposal of ~~such~~the farmland or ranchland.

**SECTION 23. AMENDMENT.** Section 10-06.1-19 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-19. Exemption from certain disclosure and other requirements for certain organizations.**

Sections 10-06.1-12, 10-06.1-15, ~~18 of this Act~~, 10-06.1-17, ~~21 of this Act~~, and 10-06.1-18 do not apply to nonprofit organizations or to corporations or limited liability companies such as banks, trust companies, or foundations serving in a fiduciary capacity as the personal representative or trustee of an estate or trust for an individual described in subsection 2 of section 10-06.1-12.

**SECTION 24. AMENDMENT.** Section 10-06.1-20 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-20. Failure to file report - Penalty.**

Every corporation or limited liability company ~~which~~that willfully fails to file any report required under this chapter or willfully files false information on any report required under this chapter is guilty of a class A misdemeanor.

**SECTION 25. AMENDMENT.** Section 10-06.1-21 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-21. Secretary of state to transmit information of noncompliance.**

If the secretary of state finds from the annual report that the corporation or limited liability company is not in compliance with the requirements of section 10-06.1-12 ~~or section 13 of this Act~~, the secretary of state shall transmit ~~such~~the information to the attorney general and the governor.

**SECTION 26. AMENDMENT.** Section 10-06.1-22 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-22. Tax commissioner to compare returns and reports.**

Each year the tax commissioner shall select at random at least five percent of the income tax returns filed by corporations or limited liability companies which report on income from engaging in the business of farming or ranching operations and shall compare ~~such~~the returns with the annual report required to be filed with the secretary of state by section 10-06.1-17 and section 21 of this Act and shall forward any apparent violations to the attorney general and the governor.

**SECTION 27. AMENDMENT.** Section 10-06.1-23 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-23. Attorney general to conduct random compliance program.**

Each year the attorney general shall select at random at least five percent of the total number of corporations and limited liability companies authorized by~~under~~ this chapter for requests for information to determine compliance with this chapter. For ~~such~~this purpose, the attorney general may request affidavits, share transfer records, certified copies of marriage licenses, birth certificates, deeds, leases, and ~~such~~ other records and documents necessary to determine compliance. The corporation or limited liability company shall comply with any request for information made under this section.

**SECTION 28. AMENDMENT.** Section 10-06.1-24 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-24. Enforcement - Penalty.**

1. a. The recorder shall mail or deliver a copy of every instrument filed or recorded, within thirty days after the instrument is recorded, to the attorney general if the instrument documents evidence of a lease agreement or purchase agreement pursuant to subsection 6 or 7 or if the instrument conveys the title to farmland or rangeland to a corporation or limited liability company.
- b. The attorney general shall commence an action in the district court of the county in which the substantial portion of farmland or rangeland used in violation of this chapter is situated if the attorney general has reason to believe that any person is violating this chapter. The attorney general shall file for record with the recorder of each county in which any portion of the land is located a notice of the pendency of the action.
- c. ~~If the court finds that the land in question~~farmland or rangeland is being held in violation of this chapter, or that a corporation or limited liability company is ~~conducting~~engaging in the business of farming or ranching in violation of this chapter, the court shall enter an order ~~so declaring~~pursuant to the court's findings of fact and conclusions of law. The attorney general shall file ~~any such~~the order for record with the recorder of each county in which any portion of the land is located. Thereafter, the corporation or limited liability company shall, within the time set by the court not to exceed one year from the date of the court's final order, divest itself of ~~any farming or ranching land~~the farmland or rangeland owned or leased by it in violation of this chapter, and cease ~~at~~engaging in the business of farming or ranching operations.
- d. Except as otherwise provided in subsection 10, any corporation or limited liability company that fails to comply with the court's order is subject to a

civil penalty not to exceed twenty-five thousand dollars and may be dissolved or terminated by the secretary of state.

2. The divestment period is deemed to be a covenant running with the title to the ~~land~~farmland or ranchland against any corporate or limited liability company grantee, corporate or limited liability company successor, or corporation or limited liability company assignee of the corporation or limited liability company not authorized to ~~de~~engage in the business of farming or ranching under this chapter.
3. Any ~~land~~farmland or ranchland not divested within the divestment period prescribed must be sold at public sale in the manner prescribed by law for the foreclosure of real estate mortgage by action. In addition, any prospective or threatened violation may be enjoined by an action brought by the attorney general in the manner provided by law, including enjoining the corporation or limited liability company from completing performance on the remainder of any leasehold which is in violation of this chapter.
4. Subject to the divestiture requirements of subsections 5, 6, and 7, a ~~domestic or foreign~~ corporation or limited liability company may acquire farmland or ranchland as security for indebtedness, by process of law in the collection of debts, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise.
5. Unless retention of the farmland or ranchland is permitted under subsection 6 or 7, all farmland or ranchland acquired as security for indebtedness, in the collection of debts, or by the enforcement of a lien or claim shall be disposed of within three years after acquiring ownership, if the acquisition would otherwise violate this chapter.
6. The disposition requirement does not apply to a corporation or limited liability company that has acquired title to the ~~land~~farmland or ranchland through the process of foreclosure of a mortgage, or a deed from a mortgagor instead of a foreclosure, if, by the expiration of one month after what is or what would have been the redemption period of the mortgage if the mortgage had been foreclosed, that corporation or limited liability company leases to the prior mortgagor from whom it was acquired, with an option to purchase, and if documents evidencing the lease agreement have been filed with the recorder of each county in which the land is located. A copy of a notice of lease is sufficient evidence. The exemption in this subsection applies for only five years and then only if the property has been appraised in accordance with subsection 8. The annual lease payments required of the tenant may not exceed seven percent of the appraised value.
7. The disposition requirement does not apply to a corporation or limited liability company that has acquired title to the ~~land~~farmland or ranchland through the process of foreclosure of a mortgage, or a deed from the mortgagor instead of foreclosure, if, by the expiration of one month after what is or what would have been the redemption period of the mortgage if the mortgage had been foreclosed, that corporation or limited liability company contracts for the sale of the land to the prior mortgagor from whom it was acquired, and if documents evidencing the purchase agreement have been filed with the recorder of each county in which the land is located. A copy of a notice of the contract for deed is sufficient evidence. An exemption under this subsection is valid only if an appraisal has been made in accordance with subsection 8, and

if it is valid, the exemption is unlimited in duration. The sale price may not exceed the price determined by the appraisers.

8. If an appraisal is required, the appraisal must be made by three independent appraisers, one selected by the corporation or limited liability company, one selected by the prior mortgagor, and the third selected by the first two appraisers.
9. If a corporation or limited liability company holds landfarmland or ranchland pending divestiture, and the holding is not otherwise governed by regulated under this section, the land must be leased to persons actually engaged in the business of farming or ranching and a disposal may not be to a corporation or limited liability company unless ownership by that corporation or limited liability company is authorized under this chapter.
10. The civil penalty for a violation of section 10-06.1-10 may not exceed one hundred thousand dollars.
11. Except as provided in subsection 10, any corporation or limited liability company continuing to violate this chapter is subject to a civil penalty not to exceed twenty-five thousand dollars and may be dissolved or terminated by the attorney general in accordance with the laws of this state.

**SECTION 29. AMENDMENT.** Section 10-06.1-25 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-25. Private enforcement.**

This chapter may be enforced in the same manner as provided in section 10-06.1-24 by any corporation or limited liability company authorized to engage in the business of farming or ranching by under this chapter or any resident of legal age of a county in which the landfarmland or ranchland owned or leased by a corporation or limited liability company in violation of this chapter is located. ~~If such action is successful, all costs of the action must be assessed against the defendant and a reasonable attorney's fee must be allowed the plaintiff. If judgment is rendered for the defendant, such costs and a reasonable attorney's fee for the defendant must be paid by the plaintiff.~~ If an action is brought under this section, the district court must award to the prevailing party the actual costs and disbursements and reasonable attorney's fees.

**SECTION 30. AMENDMENT.** Section 10-06.1-26 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-26. Protection of minority shareholders.**

1. If a shareholder owns less than fifty percent of the shares of a farming or ranching corporation or authorized livestock farm corporation doing engaged in the business of farming or ranching under this chapter, and if the terms and conditions for the repurchase of those shares by the corporation or by the other shareholders are not set forth in the bylaws or the instrument which transferred the shares to the shareholder, or are not the subject of a shareholders' agreement or an agreement between that shareholder and the corporation, then the disposition of such shares must be determined by this section upon the withdrawal of the shareholder.

2. Any shareholder who desires to withdraw from the farming or ranching corporation or authorized livestock farm corporation shall first offer the shares for sale to the remaining shareholders in proportion to the shares owned by them. If not all of the shareholders wish to purchase the shares, any one shareholder may purchase all of the shares of the withdrawing shareholder. If no shareholder desires to purchase the shares of a withdrawing shareholder, then the corporation may purchase the shares. If the corporation chooses not to purchase the shares of the withdrawing shareholder, then the withdrawing shareholder may sell the shares to any other person eligible to be a shareholder. If the withdrawing shareholder is unable to sell the shares to any other person eligible to become a shareholder, then the withdrawing shareholder may bring an action in district court to dissolve the corporation.
3. Upon a finding that the withdrawing shareholder cannot sell the shares at a fair price, the court shall enter an order directing that the farming or ranching corporation or authorized livestock farm corporation itself or any or all of the remaining shareholders pro rata or otherwise shall have twelve months from the date of the court's order to purchase the shares of the withdrawing shareholder at a fair price as determined by the court and that if the shares of the withdrawing shareholder are not completely purchased at said price, the corporation shall be dissolved and the assets of the corporation shall be first used to pay all the liabilities of the corporation with the remaining net assets to be distributed pro rata to the shareholders in proportion to their ownership of shares. For the purpose of this section, a fair price for the shares of the withdrawing shareholder must be determined as though the shares were being valued for federal gift tax purposes under the Internal Revenue Code.

**SECTION 31. AMENDMENT.** Section 10-06.1-27 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-27. Protection of minority members.**

1. If a member owns less than fifty percent of the membership interest of a farming or ranching limited liability company or authorized livestock farm limited liability company doengaged in the business of farming or ranching under this chapter and if the terms and conditions for the repurchase of that membership interest by the limited liability company or by the other members are not set forth in the bylaws, the instrument that transferred the membership interest to the member, or are not the subject of a member-control agreement or other agreement between that member and the limited liability company, the disposition of the membership interest must be determined byunder this section upon the withdrawal of the member.
2. Any member who desires to withdraw from the farming or ranching limited liability company or authorized livestock farm limited liability company shall first offer the membership interest for sale to the remaining members in proportion to the membership interests owned by the remaining members. If not all of the members wish to purchase the membership interest, any one member can purchase all of the membership interest of the withdrawing member. If no member desires to purchase the membership interest of the withdrawing member, the limited liability company may purchase the membership interest. If the limited liability company chooses not to purchase the membership interest of the withdrawing member, the withdrawing member may sell the membership interest to any other person eligible to be a member. If the withdrawing member is unable to sell the membership interest to any

other person eligible to become a member, the withdrawing member may bring an action in district court to terminate the limited liability company.

3. Upon a finding that the withdrawing member cannot sell the membership interest at a fair price, the court shall enter an order directing that the limited liability company or authorized livestock farm limited liability company itself or any of the remaining members pro rata or otherwise, have twelve months from the date of the court's order to purchase the membership interest of the withdrawing member at a fair price as determined by the court and that if the membership interest of the withdrawing member is not completely purchased at the fair price, the limited liability company must be dissolved and the assets of the limited liability company must be first used to pay all liabilities of the limited liability company with the remaining net assets to be distributed pro rata to the members in proportion to the member's membership interest ownership. For the purpose of this section, a fair price for the membership interest of the withdrawing member must be determined as though the membership interest was being valued for federal gift tax purposes under the Internal Revenue Code.

**SECTION 32. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 28, 2023

Filed April 28, 2023

## CHAPTER 103

### HOUSE BILL NO. 1084

(Government and Veterans Affairs Committee)  
(At the request of the Secretary of State)

AN ACT to amend and reenact section 10-06.1-14, subsection 1 of section 10-19.1-135, section 10-19.1-137, subsection 1 of section 10-19.1-140, subsection 2 of section 10-32.1-75, subsection 1 of section 10-32.1-77, subsection 1 of section 10-32.1-81, subsection 2 of section 10-33-128, section 10-33-130, and subsection 1 of section 10-33-133 of the North Dakota Century Code, relating to business filing requirements with the secretary of state.

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

<sup>69</sup> **SECTION 1. AMENDMENT.** Section 10-06.1-14 of the North Dakota Century Code is amended and reenacted as follows:

##### **10-06.1-14. Applicability of North Dakota limited liability company laws.**

Chapter 10-32.1, ~~except those sections which pertain to foreign limited liability companies,~~ is applicable to farming or ranching limited liability companies, which have the powers and privileges and are subject to the duties, restrictions, and liabilities of other business limited liability companies, except when inconsistent with the intent of this chapter. This chapter takes precedence in the event of any conflict with the provisions of chapter 10-32.1.

**SECTION 2. AMENDMENT.** Subsection 1 of section 10-19.1-135 of the North Dakota Century Code is amended and reenacted as follows:

1. An applicant for a certificate shall file with the secretary of state an application executed by an authorized person on forms prescribed by the secretary of state and setting forth:
  - a. The name of the foreign corporation and, if different, the name under which it proposes to transact business in this state;
  - b. The jurisdiction of its incorporation;
  - c. The date of incorporation in the jurisdiction of its incorporation and the period of duration of the foreign corporation;
  - d. The address of the principal executive office of the foreign corporation;
  - e. The name of the registered agent of the foreign corporation as provided in chapter 10-01.1, and if a noncommercial registered agent, the address of such noncommercial registered agent in this state;

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<sup>69</sup> Section 10-06.1-14 was also amended by section 15 of House Bill No. 1371, chapter 102.

- f. The purpose of the corporation which it proposes to pursue in transacting business in this state;
- g. The names and addresses of the directors and officers of the foreign corporation; and
- h. Any additional information deemed necessary or appropriate by the secretary of state to enable the secretary of state to determine whether the foreign corporation is entitled to a certificate of authority to transact business in this state.

**SECTION 3. AMENDMENT.** Section 10-19.1-137 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-137. 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 the foreign corporation changes the foreign corporation's name or purposes sought in this state, the foreign corporation promptly shall file with the secretary of state an application for an amended certificate of authority executed by an authorized person on forms prescribed by the secretary of state 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.

1. In the case of a dissolution, a foreign corporation 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.
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 4. AMENDMENT.** Subsection 1 of section 10-19.1-140 of the North Dakota Century Code is amended and reenacted as follows:

1. A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure the certificate, the foreign corporation shall file with the secretary of state an application for withdrawal, on forms prescribed by the secretary of state, together with the fees provided in section 10-19.1-147, which must set forth:
  - a. The name of the corporation and the state or country under the laws of which it is incorporated;
  - b. That the corporation is not transacting business in this state;

- c. That the corporation surrenders its authority to transact business in this state;
- d. That service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation as provided in section 10-01.1-13;
- e. A post-office address to which a person may mail a copy of any process against the corporation; and
- f. Any additional information necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees payable by the foreign corporation.

**SECTION 5. AMENDMENT.** Subsection 2 of section 10-32.1-75 of the North Dakota Century Code is amended and reenacted as follows:

2. The application must be on forms prescribed by the secretary of state and accompanied by payment of the fees provided in section 10-32.1-92 together with a certificate of good standing or a certificate of existence duly authenticated by the organizing officer of the state or country where the foreign limited liability company is organized.

**SECTION 6. AMENDMENT.** Subsection 1 of section 10-32.1-77 of the North Dakota Century Code is amended and reenacted as follows:

1. If any statement in the application for a certificate of authority by a foreign limited liability company is false when made or if the foreign limited liability company changes the name of the foreign limited liability company or purposes sought in this state, then the foreign limited liability company promptly shall file with the secretary of state an application for an amended certificate of authority executed by an authorized person on forms prescribed by the secretary of state correcting the statement and in the case of a change in the name of the foreign limited liability company, a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability company is organized.

**SECTION 7. AMENDMENT.** Subsection 1 of section 10-32.1-81 of the North Dakota Century Code is amended and reenacted as follows:

1. A foreign limited liability company authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure the certificate, the foreign limited liability company shall file with the secretary of state an application for withdrawal, on forms prescribed by the secretary of state, together with the fees provided in section 10-32.1-92, which must set forth:
  - a. The name of the foreign limited liability company and the state or country under the laws of which it is organized;
  - b. That the foreign limited liability company is not transacting business in this state;
  - c. That the foreign limited liability company surrenders its authority to transact business in this state;

- d. That service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the foreign limited liability company was authorized to transact business in this state may thereafter be made on such foreign limited liability company as provided in section 10-01.1-13; and
- e. A mailing address to which a person may mail a copy of any process against the foreign limited liability company.

**SECTION 8. AMENDMENT.** Subsection 2 of section 10-33-128 of the North Dakota Century Code is amended and reenacted as follows:

2. The application must be on forms prescribed by the secretary of state and accompanied by payment of the fees provided in section 10-33-140 together with a certificate of good standing or a certificate of existence duly authenticated by the incorporating officer of the state or country where the corporation is incorporated.

**SECTION 9. 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 on forms prescribed by the secretary of state 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 10. AMENDMENT.** Subsection 1 of section 10-33-133 of the North Dakota Century Code is amended and reenacted as follows:

1. A foreign corporation authorized to conduct activities in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure the certificate, the foreign corporation shall file with the secretary of state an application for withdrawal, on forms prescribed by the secretary of state, together with the fees provided in section 10-33-140, which must set forth:
  - a. The name of the corporation and the state or country under the laws of which it is incorporated;

- b. That the corporation is not conducting activities in this state;
- c. That the corporation surrenders its authority to conduct activities in this state;
- d. That service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to conduct activities in this state may thereafter be made on such corporation as provided in section 10-01.1-13; and
- e. A post-office address to which a person may mail a copy of any process against the corporation.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 104

### HOUSE BILL NO. 1215

(Representative Nathe)

AN ACT to amend and reenact subsection 7 of section 6-08.1-02, section 10-30.5-13, subsection 1 of section 17-05-13, and sections 54-17.7-13 and 54-63.1-05 of the North Dakota Century Code, relating to the filing of business incentive reports; and to repeal chapter 54-60.1 of the North Dakota Century Code, relating to business incentives, agreements, and reports administered by the department of commerce.

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

**SECTION 1. AMENDMENT.** Subsection 7 of section 6-08.1-02 of the North Dakota Century Code is amended and reenacted as follows:

7. The release by the industrial commission, in its capacity as the managing body of the Bank of North Dakota, of the following:
  - a. The name of any person who has obtained approval for direct or indirect financing or security, including a loan guarantee or a letter of credit, through the Bank of North Dakota primarily for purposes other than personal, family, or household purposes.
  - b. The amount of any financing or security referenced in subdivision a.
  - c. The amount of any net writeoff or loan forgiveness associated with the financing or security referenced in subdivision a which the industrial commission determines is uncollectible.
  - d. The program under which any financing or security referenced in subdivision a was made.
  - e. ~~Recipient reports and grantor reports as required under chapter 54-60.1.~~

<sup>70</sup> **SECTION 2. AMENDMENT.** Section 10-30.5-13 of the North Dakota Century Code is amended and reenacted as follows:

#### **10-30.5-13. Small business technology investment program.**

1. The corporation shall administer a small business technology investment program that provides matching investments to startup technology-based businesses.
2. The following provisions apply to small business technology investments:
  - a. A qualified applicant:

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<sup>70</sup> Section 10-30.5-13 was repealed by section 2 of House Bill No. 1216, chapter 105.

- (1) Must be a North Dakota business that is at the startup stage;
  - (2) Must be a primary sector business in the technology field; and
  - (3) Shall meet underwriting guidelines established by the corporation.
- b. Before the corporation distributes funds under this section, the recipient shall provide the corporation with detailed documentation of the availability of two dollars of angel fund investment matching funds for each dollar of state funds distributed under this section. The matching funds must be cash, must come from a North Dakota angel fund certified under section 57-38-01.26, and may not be an in-kind asset.
3. An investment under this section may not exceed fifty thousand dollars. Eligible use of the investment funds include developing a proof of concept. A recipient may not receive more than one award under this section.
  4. ~~An investment under this section is not a business incentive under chapter 54-60.1.~~

**SECTION 3. AMENDMENT.** Subsection 1 of section 17-05-13 of the North Dakota Century Code is amended and reenacted as follows:

1. The authority shall deliver a written report on its activities to the legislative council each biennium. ~~Notwithstanding chapter 54-60.1, the~~The authority shall provide an annual report to the industrial commission detailing activities and expenditures incurred during the preceding year.

**SECTION 4. AMENDMENT.** Section 54-17.7-13 of the North Dakota Century Code is amended and reenacted as follows:

**54-17.7-13. Reporting requirements.**

The authority shall deliver a written report on its activities to the legislative council each biennium. ~~The authority is not subject to the requirements of chapter 54-60.1, but to ensure public accountability,~~ the authority shall provide an annual report to the industrial commission detailing activities and expenditures incurred during the preceding year.

**SECTION 5. AMENDMENT.** Section 54-63.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-63.1-05. Clean sustainable energy program - Powers and duties of the commission.**

1. The commission is granted all the powers necessary to carry out the purposes of this chapter, including the power to:
  - a. Provide grants, loans, or other forms of financial assistance to qualified entities for the research, demonstration, development, and commercialization of projects, processes, activities, and technologies that reduce environmental impacts and use energy sources derived from within the state. Other forms of financial assistance include venture capital investments and interest rate buydowns. The commission must require an entity to provide assurance of financial and other types of support that demonstrate a commitment to the project, process, activity, or technology.

- The commission may develop policies for the approval of loans or loan guarantees issued from the clean sustainable energy fund.
- b. Enter into contracts or agreements to carry out the purposes of this chapter, including contracting for the administration of the program.
  - c. Keep accurate records of all financial transactions performed under this chapter.
  - d. Cooperate with any private, local, state, or national organization to make contracts and agreements for programs that advance the mission of the program.
  - e. Accept loan repayments, donations, grants, contributions, or gifts from any public or private source to carry out the purposes of this chapter, which must be deposited in the clean sustainable energy fund.
  - f. Make guidelines necessary to carry out the purposes of this chapter, including guidelines relating to the ownership of intellectual property.
  - g. Borrow from the Bank of North Dakota, as authorized by the legislative assembly, to make loans or loan guarantees under a loan program or loan guarantee program developed by the clean sustainable energy authority.
2. The commission may acquire, purchase, hold, use, lease, license, sell, transfer, or dispose of any interest in an asset necessary for clean sustainable energy technology development to facilitate the production, transportation, distribution, or delivery of clean energy commodities produced in the state as a purchases of last resort.
  3. The commission shall provide administrative support to the authority for the operation of the program, including the preparation of forms, review of applications, and ongoing review of any contracts. The commission may contract with a public or private entity to provide technical assistance necessary to implement the purposes of this chapter.
  4. ~~The commission is not subject to the reporting requirements under chapter 54-60.1.~~

**SECTION 6. REPEAL.** Chapter 54-60.1 of the North Dakota Century Code is repealed.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 105

### HOUSE BILL NO. 1216

(Representative Nathe)

AN ACT to amend and reenact section 10-30.5-02 of the North Dakota Century Code, relating to the purpose and use of funds in the North Dakota development fund; and to repeal section 10-30.5-13 of the North Dakota Century Code, relating to the North Dakota development fund small business technology investment program.

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

<sup>71</sup> **SECTION 1. AMENDMENT.** Section 10-30.5-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **10-30.5-02. Purpose and fund uses.**

1. It is the purpose of this chapter to create a statewide nonprofit development corporation that will have the authority to take equity positions in, to provide loans to, or to use other innovative financing mechanisms to provide capital for new or expanding businesses in this state, or relocating businesses to this state. The corporation's principal mission is the development and expansion of primary sector business in this state. The corporation may form additional corporations, limited liability companies, partnerships, or other forms of business associations in order to further its mission of primary sector economic development.
2. The exclusive focus of this corporation is business development in this state; however, it is not excluded from participation with other states or organizations in projects that have a clear economic benefit to state residents in the creation of jobs or secondary business. Emphasis should be to develop jobs that provide an income adequate to support a family above the poverty level.
3. Moneys in the development fund may be used to provide working capital or for financing the purchase of fixed assets but not to refinance existing debt. Moneys may also be used to make matching grants to county-authorized or city-authorized development corporations for the acquisition, leasing, or remodeling of real estate facilities for locating a prospective new primary sector business. A grant must be made as part of a package of financing in which the state is a participant.
4. The commissioner of commerce shall adopt rules, subject to the approval of the board of directors, necessary to implement the administration of the fund. The rules to implement the grant program must be developed to encourage local fundraising initiatives for developing locations for businesses financed by the corporation.

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<sup>71</sup> Section 10-30.5-02 was also amended by section 24 of Senate Bill No. 2015, chapter 47.

5. 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~~ million dollars per award.

<sup>72</sup> **SECTION 2. REPEAL.** Section 10-30.5-13 of the North Dakota Century Code is repealed.

Approved April 10, 2023

Filed April 11, 2023

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<sup>72</sup> Section 10-30.5-13 was amended by section 2 of House Bill No. 1215, chapter 104.



# COUNTIES

## CHAPTER 106

### HOUSE BILL NO. 1340

(Representatives Koppelman, Cory, Marschall, Mock, Schatz)  
(Senators Clemens, Larsen, Meyer, Paulson, K. Roers, Wobbema)

AN ACT to amend and reenact subsections 8 and 10 of section 11-09.1-05, subsections 12 and 14 of section 40-05.1-06, and section 62.1-01-03 of the North Dakota Century Code, relating to home rule in counties and cities and the limitation on authority of a political subdivision regarding firearms.

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

**SECTION 1. AMENDMENT.** Subsections 8 and 10 of section 11-09.1-05 of the North Dakota Century Code are amended and reenacted as follows:

8. Provide for the adoption, amendment, repeal, initiative, referral, enforcement, and civil and criminal penalties for violation of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare. ~~However, this~~This subsection does not confer any authority to regulate any industry or activity ~~which is~~ regulated by state law or by rules adopted by a state agency. This subsection is subject to the provisions of section 62.1-01-03.
10. Provide for zoning, planning, and subdivision of public or private property within the county limits but outside the zoning authority of any city or organized township. This subsection is subject to the provisions of section 62.1-01-03.

**SECTION 2. AMENDMENT.** Subsections 12 and 14 of section 40-05.1-06 of the North Dakota Century Code are amended and reenacted as follows:

12. To define offenses against private persons and property and the public health, safety, morals, and welfare, and provide penalties for violations thereof. This subsection is subject to the provisions of section 62.1-01-03.
14. To provide for zoning, planning, and subdivision of public or private property within the city limits. To provide for such zoning, planning, and subdivision of public or private property outside the city limits as may be permitted by state law. This subsection is subject to the provisions of section 62.1-01-03.

**SECTION 3. AMENDMENT.** Section 62.1-01-03 of the North Dakota Century Code is amended and reenacted as follows:

**62.1-01-03. Limitation on authority of political subdivision regarding firearms - Civil action.**

1. A political subdivision, including home rule cities or counties, may not enact a ~~zoning ordinance or any other ordinance~~ relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition which is more restrictive than state law. All such existing ordinances are void.
2. A political subdivision, including home rule cities or counties, may not enact a zoning ordinance relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition. All such existing ordinances are void.
3. This section does not limit the ability of a political subdivision, including home rule cities or counties, to enforce an ordinance or zoning regulation relating to a business operation if the restriction in the ordinance or regulation:
  - a. Applies equally to all persons engaging in commerce within the area subject to the ordinance or regulation; and
  - b. Is not specifically related to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition.
4. The absence of a state law restriction relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition may not be construed to allow a political subdivision, including a home rule city or county, to enact an ordinance restricting the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition.
5. A person aggrieved under ~~subsection 4~~this section may bring a civil action against a political subdivision for damages as a result of an unlawful ordinance.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 107

### SENATE BILL NO. 2350

(Senators Clemens, Rummel, Wobbema)  
(Representatives Prichard, D. Ruby)

AN ACT to create and enact a new section to chapter 11-10 of the North Dakota Century Code, relating to traffic signs.

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

**SECTION 1.** A new section to chapter 11-10 of the North Dakota Century Code is created and enacted as follows:

##### **Addition of penalty to traffic signs - Requirements.**

1. The department of transportation shall allow a county, city, or township to affix to any traffic sign prohibiting engine brakes and signifying that a vehicle noise ordinance is enforced and the amount of the penalty for violation of an offense corresponding with the purpose of the sign.
2. A county, city, or township may affix the amount of the penalty to a traffic sign under subsection 1 only if the:
  - a. County, city, or township has adopted an ordinance indicating a traffic offense;
  - b. Ordinance states the penalty for violation of the offense;
  - c. Ordinance is actively being enforced;
  - d. Department of transportation procures the sign for the county, city, or township; and
  - e. County, city, or township covers or reimburses the department of transportation all labor, equipment, and material costs related to the installation of the sign.
3. The penalty sign must be uniform in size and text in relation to the traffic sign to which it is affixed and in compliance with the manual on uniform traffic control devices.
4. This section applies only to state highways within a county, city, or township.

Approved March 20, 2023

Filed March 21, 2023

## CHAPTER 108

### HOUSE BILL NO. 1234

(Representatives Heinert, Bosch, Dockter, Hagert, Kasper, Novak, Porter, M. Ruby)  
(Senators Kannianen, Patten)

AN ACT to create and enact a new section to chapter 11-10 and a new section to chapter 40-01 of the North Dakota Century Code, relating to prohibiting a county or city from prohibiting the connection or reconnection of utilities services.

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

**SECTION 1.** A new section to chapter 11-10 of the North Dakota Century Code is created and enacted as follows:

##### **Prohibition - Connection of utility services.**

Notwithstanding any other provision of law, a county may not adopt or enforce an ordinance, resolution, or policy that prohibits or impedes, or has the effect of prohibiting or impeding, the connection or reconnection of an electric, natural gas, propane, or other energy utility service based on fuel source provided by a public utility, municipal utility, cooperative utility, or propane service.

**SECTION 2.** A new section to chapter 40-01 of the North Dakota Century Code is created and enacted as follows:

##### **Prohibition - Connection of utility services.**

Notwithstanding any other provision of law, a city may not adopt or enforce an ordinance, resolution, or policy that prohibits or impedes, or has the effect of prohibiting or impeding, the connection or reconnection of an electric, natural gas, propane, or other energy utility service based on fuel source provided by a public utility, municipal utility, cooperative utility, or propane service.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 109

### SENATE BILL NO. 2371

(Senators Paulson, Larsen, Wobbema)  
(Representatives Fisher, Hoverson, Louser)

AN ACT to create and enact a new section to chapter 11-11 and a new section to chapter 40-05 of the North Dakota Century Code, relating to the power of counties and municipalities to prohibit local development by a foreign adversary; to amend and reenact section 47-01-09 of the North Dakota Century Code, relating to the prohibition on ownership of real property by a foreign adversary; to provide for a legislative management study; and to provide an expiration date.

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

**SECTION 1.** A new section to chapter 11-11 of the North Dakota Century Code is created and enacted as follows:

##### **Development by a foreign adversary - Prohibition.**

1. A board of county commissioners, including a board in a home rule county, may not procure, authorize, or approve a development agreement, building plan, or proposal relating to county development with an individual or government identified as a foreign adversary under 15 CFR 7.4(a) or a person identified on the office of foreign assets control sanctions list.
2. This section does not apply to a foreign adversary defined under subsection 1 possessing an interest in real property if the foreign adversary:
  - a. Is a duly registered business and has maintained a status of good standing with the secretary of state for seven years or longer before the effective date of this Act;
  - b. Has been approved by the committee on foreign investment in the United States; and
  - c. Maintains an active national security agreement with the federal government.

**SECTION 2.** A new section to chapter 40-05 of the North Dakota Century Code is created and enacted as follows:

##### **Development by a foreign adversary - Prohibition.**

1. A board of city commissioners or city council, including a board or council in a home rule city, may not procure, authorize, or approve a development agreement, building plan, or proposal relating to city development with an individual or government identified as a foreign adversary under 15 CFR 7.4(a) or a person identified on the office of foreign assets control sanctions list.

2. This section does not apply to a foreign adversary as defined in subsection 1 possessing an interest in real property if the foreign adversary:
  - a. Is a duly registered business and has maintained a status of good standing with the secretary of state for seven years or longer before the effective date of this Act;
  - b. Has been approved by the committee on foreign investment in the United States; and
  - c. Maintains an active national security agreement with the federal government.

**SECTION 3. AMENDMENT.** Section 47-01-09 of the North Dakota Century Code is amended and reenacted as follows:

**47-01-09. Public or private ownership - All property subject to - Foreign ownership prohibited.**

1. All property in this state has an owner, whether that owner is the United States or the state, and the property public, or the owner an individual, and the property private. The state also may hold property as a private proprietor.
2. Notwithstanding any other provision of law, the following governments or entities may not purchase or otherwise acquire title to real property in this state after the effective date of this Act:
  - a. A foreign adversary.
  - b. A foreign business entity with a principal executive office located in a country that is identified as a foreign adversary.
  - c. A foreign business entity in which a foreign adversary owns:
    - (1) More than fifty percent of the total controlling interests or total ownership interests, as defined under section 10-19.1-01, in the foreign business entity, unless the foreign business entity was operating lawfully in the United States on the effective date of this Act;  
or
    - (2) Fifty percent or less of the total controlling interests or total ownership interests, as defined under section 10-19.1-01, in the foreign business entity, if the foreign adversary directs the business operations and affairs of the foreign business entity without the requirement of consent of any nonforeign adversary, unless the foreign business entity was operating lawfully in the United States on the effective date of this Act.
3. When requested by a city council or commission, county commission, or title agent or company, the attorney general shall complete a civil review, to the extent allowable by law, relating to the qualifications of any foreign adversary business entity acquiring real property under subdivision c of subsection 2.
4. This section does not apply to an entity possessing an interest in real property under subsection 2 if the entity:

- a. Is a duly registered business and has maintained a status of good standing with the secretary of state for seven years or longer before the effective date of this Act;
  - b. Has been approved by the committee on foreign investment in the United States; and
  - c. Maintains an active national security agreement with the federal government.
5. A foreign government or foreign business entity subject to and in violation of this section shall divest itself of all real property in this state within thirty-six months after the effective date of this Act.
  6. If a foreign government or foreign business entity subject to this section fails to divest itself of all real property in this state within the period specified under subsection 4, the state's attorney of the county in which the majority of the real property is situated may issue subpoenas to compel witnesses to appear to provide testimony or produce records.
  7. Upon receiving testimony and records, if the state's attorney concludes a foreign government or foreign business entity, in violation of this section, has failed to divest ownership of real property as required under this section, the state's attorney shall commence an action in the district court of the county in which the majority of the real property is situated. Once the action is commenced, the state's attorney shall file a notice pursuant to section 28-05-07 with the recorder of each county where the real property subject to the action is situated. If the court finds divestment of real property under this section is proper, the district court shall enter an order consistent with its findings. As part of the order, the court shall cancel the notice pursuant to section 28-05-08.
  8. Pursuant to an order for divestment, a foreign government or foreign business entity subject to an order shall divest all real property within six months from the date of the final entry of judgment. A foreign government or foreign business entity that fails to comply with the court's order is subject to a civil penalty not to exceed twenty-five thousand dollars.
  9. Any real property not divested within the period prescribed by law may be sold at a public sale in the manner provided under chapter 32-19 through an action brought by the state's attorney. A title to real property or encumbrance on the real property may not be deemed invalid by an order of divestiture under this section.
10. A person that is not subject to this section may not be required to:
    - a. Determine whether another person is subject to this section; or
    - b. Inquire if another person is subject to this section.
  11. For purposes of this section, "foreign adversary" means an individual or a government identified as a foreign adversary in 15 CFR 7.4(a) or a person identified on the office of foreign assets control sanctions list.

**SECTION 4. LEGISLATIVE MANAGEMENT STUDY - REAL PROPERTY AND COMMERCIAL ASSET OWNERSHIP AND OPERATION OF BUSINESS AND CHARITABLE ENTITIES BY FOREIGN ADVERSARIES.**

1. During the 2023-24 interim, the legislative management shall study the number of persons that own or control any real estate or commercial assets or operate a business within this state which is owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries or individuals acting on behalf of or in conjunction with foreign adversaries or persons listed on the office of foreign assets control sanctions list.
2. The study must attempt to craft a definition of foreign adversary and ascertain the number of such persons residing in this state which operate a business or a charitable enterprise or have obtained a beneficial interest in real estate, commercial assets, or a business or charitable organization in this state.
3. The study must consider which federal foreign adversary list would be best suited for use for the security of this state and the impact of implementing and using a federally created list.
4. The study must determine how to define, create, and implement a security review verification system that monitors and reviews the actions of foreign adversaries that operate a business or a charitable enterprise or have obtained a beneficial interest in real estate, commercial assets, or a business or charitable organization in this state.
5. The study must:
  - a. Identify optimal methods for state officials to work and collaborate with national intelligence agents at the state and federal level regarding background checks, national security, and state security;
  - b. Outline what constitutes a national security threat and which person or agency has the authority to declare a national security threat and security threat to this state;
  - c. Identify which state agencies are best equipped to create, implement, and operate a security review verification system that monitors and reviews foreign adversaries operating a business or a charitable enterprise or that have obtained a beneficial interest in real estate, commercial assets, or a business or charitable organization in this state;
  - d. Identify the proper structure and function of a security review verification system;
  - e. Identify the individuals and persons eligible to operate a business or a charitable enterprise or that have obtained a beneficial interest in real estate, commercial assets, or a business or charitable organization in this state, under the security review verification system; and
  - f. Identify other necessary changes to current industry practices relating to ownership of real property or commercial assets and the operation of business or charitable entities by a foreign adversary.
6. The study must include under which circumstances, if any, foreign adversaries are prohibited from owning real property in this state, and under which

circumstances, if any, foreign adversaries are permitted to own real property in this state.

7. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 5. EXPIRATION DATE.** This Act is effective through July 31, 2025, and after that date is ineffective.

Approved April 29, 2023

Filed May 1, 2023

## CHAPTER 110

### SENATE BILL NO. 2370

(Senators Davison, Elkin)  
(Representative Richter)

AN ACT to create and enact a new section to chapter 11-11 and a new section to chapter 40-05 of the North Dakota Century Code, relating to cooperative purchasing pursuant to a joint powers agreement; and to amend and reenact subsection 4 of section 11-11-14, and subsection 52 of section 40-05-01 of the North Dakota Century Code, relating to authorizing a city or a county to engage in cooperative purchasing.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 11-11-14 of the North Dakota Century Code is amended and reenacted as follows:

4. To control the finances, to contract debts and borrow money, to make payments of debts and expenses, to establish charges for any county or other services, and to control the property of the county, and to contract for cooperative purchases pursuant to a joint-powers agreement under chapter 54-40.3.

**SECTION 2.** A new section to chapter 11-11 of the North Dakota Century Code is created and enacted as follows:

#### **Cooperative purchasing - Authorized.**

With the approval of the board of county commissioners, a county may participate in cooperative purchasing agreements with the state, or another political subdivision of this state or any other state, by executing a joint-powers agreement under chapter 54-40.3.

**SECTION 3. AMENDMENT.** Subsection 52 of section 40-05-01 of the North Dakota Century Code is amended and reenacted as follows:

52. Supplies. To provide that supplies needed for the use of the municipality shallcity be furnished by contract let to the lowest responsible bidder, except the city may contract for cooperative purchases pursuant to a joint-powers agreement under chapter 54-40.3. This section does not apply to construction of public improvement as defined in chapter 48-01.2.

**SECTION 4.** A new section to chapter 40-05 of the North Dakota Century Code is created and enacted as follows:

#### **Cooperative purchasing - Authorized.**

With the approval of the board of city commissioners or the city council, a city may participate in cooperative purchasing agreements with the state, or another political subdivision of this state or any other state, by executing a joint-powers agreement under chapter 54-40.3. This section does not apply to construction of a public improvement as defined in chapter 48-01.2.

Approved March 23, 2023

Filed March 23, 2023

## CHAPTER 111

### HOUSE BILL NO. 1120

(Representatives Heinert, Cory, Dockter, Longmuir, Meier, M. Ruby)

AN ACT to amend and reenact sections 11-11-05, 15.1-09-30, 40-06-02, 49-01-07, 54-16-01, and 54-17-02 of the North Dakota Century Code, relating to the recitation of the pledge of allegiance.

#### 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 - Pledge of allegiance.**

The board of county commissioners shall meet and hold regular meetings for the transaction of business at 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 meetings when the interests of the county demand it. The chairman of the board, or a majority of the members thereof, may call special meetings that must be noticed in accordance with section 44-04-20. At the beginning of each regularly scheduled meeting, board members must be given the opportunity to participate in a voluntary recitation of the pledge of allegiance.

<sup>73</sup> **SECTION 2. AMENDMENT.** Section 15.1-09-30 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-09-30. School boards - Meetings - Pledge of allegiance.**

1. Each school board shall hold an initial meeting during the month of July following the annual election. The president of the school board shall select a meeting date that is convenient to the other board members and shall provide board members with written notice of the meeting.
2. Once during each month thereafter, a board shall hold a regular meeting for the transaction of business. The board of any school district having only one-room and two-room schools may meet as often as the board deems necessary, but not less than four times in each year.
3. Special meetings may be called by the president or by any two members of a board. Written notice of a special meeting must be given to each member of a board.
4. At the beginning of each regularly scheduled school board meeting, board members must be given the opportunity to participate in a voluntary recitation of the pledge of allegiance.

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<sup>73</sup> Section 15.1-09-30 was also amended by section 1 of House Bill No. 1270, chapter 178.

5. The attendance of a board member at any meeting, without objection, constitutes a waiver of the notice requirement for that member.
- 5-6. A board of a school district operating under an academic cooperative agreement approved by the superintendent of public instruction may participate in multiboard meetings in addition to, instead of, or in conjunction with the regular board meetings required by this section. Multiboard meetings must be for the purpose of pursuing joint academic or cooperative activities and must be held at the times and locations agreed to by the presidents of the participating boards. In addition to any other requirements set forth in section 44-04-20, the presidents of each school board shall ensure that notice of each multiboard meeting in which the school board will participate is published in the local newspapers of general circulation at least one week before the meeting date.

**SECTION 3. AMENDMENT.** Section 40-06-02 of the North Dakota Century Code is amended and reenacted as follows:

**40-06-02. Meetings to be public - Journal of proceedings to be kept - Pledge of allegiance.**

All meetings of the governing body shall be open to the public, and a journal of its proceedings shall be kept. At the beginning of each regularly scheduled meeting of the governing body, members of the governing body must be given the opportunity to participate in a voluntary recitation of the pledge of allegiance.

**SECTION 4. AMENDMENT.** Section 49-01-07 of the North Dakota Century Code is amended and reenacted as follows:

**49-01-07. Proceedings of public service commission - Pledge of allegiance.**

The commission in all cases may conduct its proceedings, when not otherwise particularly prescribed by law, in a manner most conducive to the proper dispatch of business and to the ends of justice. A majority of the commission shall constitute a quorum for the transaction of business, but a commissioner shall not participate in any hearing or proceeding in which that commissioner has any direct personal pecuniary interest. The commission from time to time may make or amend such general rules or orders as may be requisite for the orderly regulation of proceedings before it, including forms of notice and the service thereof, which shall conform as nearly as possible to those in use in the courts of this state. Any party may appear before the commission and may be heard in person or by attorney. Every vote and official action of the commission shall be entered of record and its proceedings shall be public upon the request of any person interested. The commission shall have an official seal, which shall be judicially noticed, and every commissioner shall have the right to administer oaths and affirmations in any proceeding pending before the commission. At the beginning of each regularly scheduled meeting of the commission, members must be given the opportunity to participate in a voluntary recitation of the pledge of allegiance.

**SECTION 5. AMENDMENT.** Section 54-16-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-16-01. Emergency commission - Members - Organization - Quorum - Meetings - Pledge of allegiance.**

The emergency commission consists of the governor, the majority leaders of the senate and house of representatives of the legislative assembly, the secretary of

state, and the chairmen of the senate and house of representatives appropriations committees. If the chairman of an appropriations committee ceases to be a member of the legislative assembly, the vice chairman of that committee succeeds to that position on the commission. An appropriations committee vice chairman may serve in the place of the appropriations committee chairman as a member of the commission at the request of the appropriate appropriations committee chairman, if the appropriations committee chairman is unable to attend a commission meeting. If a majority leader ceases to be a member of the legislative assembly, the respective house's assistant majority leader succeeds to that position on the commission. A majority leader's assistant majority leader may serve as a member of the commission in the place of the majority leader at the request of the majority leader if that majority leader is serving on the commission in another capacity or is unable to attend a commission meeting. Four members of the commission constitute a quorum. The governor is the chairman and the secretary of state is the secretary of the commission. The commission shall meet at the call of the chairman. At the beginning of each regularly scheduled meeting of the emergency commission, members must be given the opportunity to participate in a voluntary recitation of the pledge of allegiance.

**SECTION 6. AMENDMENT.** Section 54-17-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-17-02. Industrial commission - Members - Quorum - Meetings - Pledge of allegiance.**

The industrial commission of North Dakota shall consist of the governor, the attorney general, and the agriculture commissioner. The governor and one member constitute a quorum for the transaction of business. The meetings of the commission must be held at such times and places as the governor or a majority of the commission may determine. It must be provided by the proper authorities with suitably furnished offices at the seat of government. At the beginning of each regularly scheduled meeting of the industrial commission, members must be given the opportunity to participate in a voluntary recitation of the pledge of allegiance.

Approved April 20, 2023

Filed April 21, 2023

## CHAPTER 112

### SENATE BILL NO. 2306

(Senators Klein, Kessel, K. Roers)  
(Representatives Boschee, Nathe, Stemen)

AN ACT to create and enact a new subsection to section 11-11.1-01 of the North Dakota Century Code, relating to job development authorities.

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

**SECTION 1.** A new subsection to section 11-11.1-01 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding any provision in this chapter, if a board of county commissioners elects to contract with an active economic development organization to perform the functions of a job development authority:

- a. The board of county commissioners may, as an alternative to subsections 2 and 3, authorize the board of directors of an active economic development organization to serve as the board of directors for the job development authority authorized under this chapter.
- b. The board of directors of the active economic development organization may elect to seat some or all of the organization's board of directors on the board of directors of the job development authority. The board of directors of the job development authority must be approved by the board of county commissioners.

Approved March 22, 2023

Filed March 23, 2023

## CHAPTER 113

### HOUSE BILL NO. 1042

(Human Services Committee)

(At the request of the Department of Health and Human Services)

AN ACT to amend and reenact sections 11-19.1-11, 11-19.1-13, and 11-19.1-16 of the North Dakota Century Code, relating to autopsies, determination of cause of death, and certification of coroner fees in situations involving the unexplained sudden death in infant or child with or without intrinsic or extrinsic factors, or both.

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

**SECTION 1. AMENDMENT.** Section 11-19.1-11 of the North Dakota Century Code is amended and reenacted as follows:

##### **11-19.1-11. Autopsies - Notice of results.**

1. The coroner or the coroner's medical deputy, if the coroner deems it necessary, may take custody of the deceased human body for the purpose of autopsy. When the coroner does not deem an autopsy necessary, the sheriff 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 minor whose cause of death is suspected by the minor's parent or guardian or the coroner or the coroner's medical deputy to have been the unexplained sudden infant death syndrome in infant or child with or without intrinsic or extrinsic factors, or both, the coroner or the coroner's medical deputy, after consultation with the parent or guardian, shall take custody of the body and shall arrange for the performance of the autopsy by 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 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 2. 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 must be incorporated in the death certificate filed with the registrar of vital statistics of this state. The term "unexplained sudden infant death syndrome in infant or child with or without intrinsic or extrinsic factors, or both" 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 3. AMENDMENT.** Section 11-19.1-16 of the North Dakota Century Code is amended and reenacted as follows:

**11-19.1-16. Coroner's fees paid out of county treasury - Fees to be charged by coroner - Duty of county auditor - Certain expenses paid by the state.**

1. The fees and mileage as provided by section 11-10-15 allowed to the coroner shall be paid out of the county treasury of the county of residence of the deceased person and the coroner's bill shall be presented to the county auditor and shall be paid upon approval and order of the board of county commissioners.
2. The department of health and human services shall audit, and if found correct, certify for payment by the state treasurer duly itemized and verified claims of the coroner, the coroner's medical deputy, and pathologist for the necessary expenses incurred or paid in the performance of an autopsy of a child whose cause of death was suspected to have been the unexplained sudden infant death syndrome in infant or child with or without intrinsic or extrinsic factors, or both.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 114

### HOUSE BILL NO. 1365

(Representatives Fegley, Rohr, Tveit)  
(Senator Lee)

AN ACT to create and enact a new section to chapter 11-28.3 and a new section to chapter 23-27 of the North Dakota Century Code, relating to the discharge of a rural ambulance service's financial obligations and required formation of rural ambulance service districts without a vote; to amend and reenact sections 11-28.3-05 and 11-28.3-06, subsection 8 of section 11-28.3-08, sections 11-28.3-09, 11-28.3-13, 11-28.3-16, 23-12-08, 23-27-04.2, 23-46-04, and 57-15-50 of the North Dakota Century Code, relating to rural ambulance service district formation, organization, board of director powers, levies, and dissolution and withdrawal procedures, ambulance operations areas, authorization and state financial assistance for emergency medical services, and county emergency medical service levies.

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

**SECTION 1. AMENDMENT.** Section 11-28.3-05 of the North Dakota Century Code is amended and reenacted as follows:

##### **11-28.3-05. Notice by county auditor of meeting to organize district.**

If a rural ambulance service district is approved as provided in this chapter or as required by section 10 of this Act, the county auditor of the county in which the proposed district is located shall issue notice of a public meeting to organize the rural ambulance service district. The notice must be given by publication once a week for two consecutive weeks, the last notice appearing seven days before the date of the meeting in a newspaper of general circulation within the proposed district. The notice must be addressed to all qualified electors residing within the boundaries of the district, describe the boundaries of the district, and state the date, time, and place of the meeting. If the district is located within two or more counties, the county auditors of the counties shall confer and set the date, time, and place of the meeting and shall cause the publication of the meeting notice in each of said counties.

**SECTION 2. AMENDMENT.** Section 11-28.3-06 of the North Dakota Century Code is amended and reenacted as follows:

##### **11-28.3-06. Organization - Board of directors.**

At the time and place fixed by the county auditor for the public meeting as provided in section 11-28.3-05, the qualified electors present who reside within the boundaries of the district shall proceed to organize the district. Permanent organization must be effected by the election of a board of directors consisting of not less than five nor more than ten residents of the district. The board of directors shall meet as soon after the organizational meeting as possible to elect a president, a vice president, and a secretary-treasurer. All directors and officers must be elected for two years and hold office until their successors have been elected and qualified, except that at the first election the vice president must be elected as provided in this section for a one-year term, and one-half, or as close to one-half as possible depending upon

the total number of directors, of the directors elected at the first election after July 1, 1977, must be selected by lot in the presence of a majority of such directors to serve one-year terms. A district may specify in its bylaws a specified number of directors within the limitations in this section, provided each township or group of townships receives equal representation on the board with respect to the regions. The bylaws also may allow for a combination of regional directors and at-large directors. If a vacancy occurs in a board position due to a resignation, a special meeting must be called and held within sixty days of the resignation for the purpose of electing a director to serve the remainder of the term. All officers and directors shall serve without pay, except the secretary-treasurer, who may be paid a salary determined by the board of directors. No more than two elected members of the board may be members of the licensed ambulance service serving the district territory and those board members must meet the definition of volunteer in section 23-27-04.1.

**SECTION 3. AMENDMENT.** Subsection 8 of section 11-28.3-08 of the North Dakota Century Code is amended and reenacted as follows:

8. Organizelf emergency medical services are not provided by a licensed ambulance service under chapter 23-27, a district may organize, establish, equip, maintain, and supervise an emergency medical service company to serve the district.

<sup>74</sup> **SECTION 4. AMENDMENT.** Section 11-28.3-09 of the North Dakota Century Code is amended and reenacted as follows:

**11-28.3-09. Emergency medical service policy - Levy - Financial report.**

1. The board of directors shall establish a general emergency medical service policy for the district and annually shall estimate the probable expense for carrying out that policy. The estimate must be certified by the president and secretary to the proper county auditor or county auditors, on or before June thirtieth of each year. In the year for which the levy is sought, a board of directors of a rural ambulance service district seeking approval of a property tax levy under this chapter shall file with the county auditor of the counties within the rural ambulance service district, at a time and in a format prescribed by the county auditors, a financial report for the preceding calendar year showing the ending balances of each fund held by the rural ambulance service district during that year. The board or boards of county commissioners may levy a tax not to exceed the mill rate approved by the electors of the district under section 11-28.3-04. If the board wishes to levy a tax in excess of that approved by the electors, the board, upon its own motion, may place the question of increasing the maximum allowable mill levy for the electors to approve at a regular or special election. The amount levied under this section may not exceed a mill rate of fifteen mills upon the taxable property within the district for the maintenance of the rural ambulance service district for the fiscal year as provided by law. ~~A rural ambulance service district may be dissolved by approval of electors of the district as provided in section 11-28.3-13.~~
2. The tax levied for a rural ambulance service district must be:
  - a. Collected as other taxes are collected in the county.

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<sup>74</sup> Section 11-28.3-09 was also amended by section 2 of House Bill No. 1477, chapter 115.

- b. Turned over to the secretary-treasurer of the rural ambulance service district, who must be bonded in the amount of at least five thousand dollars.
  - c. Deposited by the secretary-treasurer in a state or national bank in a district account.
  - d. Paid out upon warrants drawn upon the district account by authority of the board of directors of the district, bearing the signature of the secretary-treasurer and the countersignature of the president.
3. The amount of the tax levy may not exceed the amount of funds required to defray the expenses of the district for a period of one year as embraced in the annual estimate of expense, including the amount of principal and interest upon the indebtedness of the district for the ensuing year. The district may include in its operating budget no more than ten percent of its annual operating budget as a depreciation expense to be set aside in a dedicated emergency medical services sinking fund deposited with the treasurer for the replacement of equipment and ambulances. The ten percent emergency medical services sinking fund may be in addition to the actual annual operating budget, but the total of the annual operating budget and the annual ten percent emergency medical services sinking fund shall not exceed the amount of revenue that would be generated by application of the maximum mill levy approved by the electors.
4. If an ambulance operations area identified by the department of health and human services under section 23-27-01 is situated, in whole or in part, within the boundaries of a rural ambulance service district formed under this chapter, and the district does not provide emergency medical services to the territory in the ambulance operations area, whether directly or through a contract under section 11-28.3-12, the property situated in the ambulance operations area which does not receive emergency medical services from the district is exempt from the district's tax levy under this section. Changes to the ambulance operations area will not impact the district under this section until the subsequent tax year. The excluded territory remains responsible and must discharge its proportionate share of outstanding obligations pursuant to the procedure under section 7 of this Act.

**SECTION 5. AMENDMENT.** Section 11-28.3-13 of the North Dakota Century Code is amended and reenacted as follows:

**11-28.3-13. Boundaries of rural ambulance service district - Dissolution of the district.**

The boundaries of any rural ambulance service district organized under this chapter may be changed in the manner prescribed by section 11-28.3-15 or 11-28.3-16, but a change in the boundary of a district does not impair or affect its organization or its right in or to property; nor does it impair, affect, or discharge any contract, obligation, lien, or charge for or upon which it might be liable had such change of boundaries not been made.

~~Dissolution of a rural ambulance service district may be accomplished in the manner prescribed by section 11-28.3-15 or 11-28.3-16. The petition and notice of election must state the purpose of the election is to dissolve the rural ambulance service district and must describe its boundaries. The ballot to dissolve a rural ambulance service district must be in substantially the following form:~~

~~Shall (name of taxing district or districts) cease to levy a tax for the purpose of maintaining a rural ambulance service district, and shall such district be dissolved?~~

~~Yes~~

~~No~~

~~If a majority of all votes cast on the question are in favor of dissolution, as provided in this section. If an ambulance service district in whole does not provide emergency medical services under section 23-27-01, whether directly or through a contract under section 11-28.3-12, the district board, upon its own motion and vote, may dissolve the district is dissolved thirty days after the canvass of the vote effective the subsequent tax year. After The territory remains subject to all debts and obligations of the dissolved district are paid, any remaining funds must be deposited in the general fund of the county in which the district was contained. If the dissolved district was located in more than one county, any pursuant to the procedure under section 7 of this Act. Any funds remaining after all debts and obligations are paid must be divided among those counties rural ambulance service districts or political subdivisions responsible for emergency medical service operations in the jurisdiction in the same proportion as the geographical area of the district in each county bears to the total geographical area of the dissolved district.~~

<sup>75</sup> **SECTION 6. AMENDMENT.** Section 11-28.3-16 of the North Dakota Century Code is amended and reenacted as follows:

**11-28.3-16. Withdrawal from ambulance service district - Restrictions.**

1. Any elector who resides in an area subject to a mill levy under section 11-28.3-09 and wishes to withdraw from the ambulance service district may do so if the territory to be withdrawn from the district:
  - a. Borders on the outer boundary of the district; and
  - b. Has a written agreement with an adjacent emergency medical services operation licensed by the department of health and human services to provide coverage to the territory if the territory is withdrawn successfully.
2. The district shall discharge its financial obligations pursuant to the procedure under section 7 of this Act.
3. Notwithstanding section 57-40.6-10, the district is not obligated to maintain the withdrawn district within the primary response area of the district.
3. ~~The territory to be withdrawn from the district under this section remains subject to and chargeable for the payment and discharge of the proportion of obligations outstanding at the time of the filing of the petition for the withdrawal of the territory. The taxable valuation of property in the territory to be withdrawn bears to the taxable valuation of all property within the district before the withdrawal.~~
4. ~~Mill levies imposed under section 11-28.3-09 remain in effect until the proportionate share of outstanding obligations are paid.~~

<sup>75</sup> Section 11-28.3-16 was also amended by section 5 of House Bill No. 1477, chapter 115.

5. The proceedings for withdrawal must be initiated by the filing of a petition with the appropriate county auditor or signed by fifty electors, or if there are not fifty electors residing in the area, fifty percent of the qualified electors in the territory sought to be withdrawn and the petition must contain a description of the boundaries of the territory sought to be withdrawn and a map or plat illustrating the area.
- ~~6-5.~~ The county auditor shall determine whether the petition complies with the requirements of subsection 5. If the petition is accepted, the county auditor promptly shall designate a time and place for an election upon the petition and shall give notice of the election in the manner prescribed by section 11-28.3-03. At the election, any qualified elector residing within the boundaries of the territory to be withdrawn may cast a vote. If the majority cast a vote in favor of the question of withdrawal, the territory is considered withdrawn from the district.
- ~~7-6.~~ The county auditor shall determine and certify the respective percentage proportions of the taxable valuation of the territory petitioned to be withdrawn to the taxable valuation of all property in the district before withdrawal to the board of directors of the district withdrawn.
- ~~8-7.~~ Within thirty days after receipt of the petition, verification, and computation of respective percentage proportions, the board of directors of the district withdrawn shall attach to the petition a statement of outstanding obligations of the district and shall forward the petition to the appropriate board or boards of county commissioners.
- ~~9.~~ The board or boards of county commissioners, at a regular meeting, shall compute the indebtedness proportionately assignable to the territory sought to be withdrawn, and shall describe, by written order, the boundaries of the territory withdrawn and the indebtedness of the district assigned to the territory and subject to continued levy under section 11-28.3-09. The order and computation must be filed in the office of the county auditor.
- ~~10.~~ The annual estimate required under section 11-28.3-09 must reflect the annual expense of retiring principal and interest upon the proportionate share of district indebtedness assigned to the withdrawn territory.

**SECTION 7.** A new section to chapter 11-28.3 of the North Dakota Century Code is created and enacted as follows:

**Discharge of financial obligations.**

1. The territory to be withdrawn, exempted, or dissolved from the district under this chapter remains subject to and chargeable for the payment and discharge of the proportion of obligations outstanding at the time of the withdrawal, exemption, or dissolution. The taxable valuation of property in the territory to be withdrawn, exempt, or dissolved bears to the taxable valuation of all property within the district before the withdrawal, exemption, or dissolution.
2. Mill levies imposed under section 11-28.3-09 remain in effect until the proportionate share of outstanding obligations are paid.
3. The board or boards of county commissioners, at a regular meeting, shall compute the indebtedness proportionately assignable to the territory sought to be withdrawn, exempted, or dissolved, and shall describe, by written order, the

boundaries of the territory withdrawn, exempted, or dissolved and the indebtedness of the district assigned to the territory and subject to continued levy under section 11-28.3-09. The order and computation must be filed in the office of the county auditor.

4. The annual estimate required under section 11-28.3-09 must reflect the annual expense of retiring principal and interest upon the proportionate share of district indebtedness assigned to the withdrawn, exempted, or dissolved territory.

**SECTION 8. AMENDMENT.** Section 23-12-08 of the North Dakota Century Code is amended and reenacted as follows:

**23-12-08. Emergency medical service authorized.**

Anyf emergency medical services are not provided by a licensed ambulance service under chapter 23-27, any county or municipality of the state of North Dakota, by itself, or in combination with any other county or municipality of the state of North Dakota, may, acting through its governing body, establish, maintain, contract for, or otherwise provide emergency medical service for such county or municipality; and for this purpose, out of any funds of such county or municipality not otherwise committed, may buy, rent, lease, or otherwise contract for all such vehicles, equipment, or other facilities or services which may be necessary to effectuate such purpose.

**SECTION 9. AMENDMENT.** Section 23-27-04.2 of the North Dakota Century Code is amended and reenacted as follows:

**23-27-04.2. Emergency medical services - State assistance.**

The department of health and human services shall assist in the training of emergency medical services personnel of certain emergency medical services operations as determined by the department and financially shall assist certain emergency medical services operations as determined by the department ~~in obtaining equipment~~. Assistance provided under this section must be within the limits of legislative appropriation. The department shall adopt criteria for eligibility for assistance in the training of emergency medical services personnel of various types of emergency medical services operations. ~~To qualify for financial assistance for equipment an emergency medical services operation shall certify, in the manner required by the department, that the operation has fifty percent of the amount of funds necessary for identified equipment acquisitions. The department shall adopt a schedule of eligibility for financial assistance for equipment. The schedule must provide for a direct relationship between the amount of funds certified and the number of responses during the preceding calendar year for the purpose of rendering medical care, transportation, or both, to individuals who were sick or incapacitated. The schedule must require that as the number of responses increases, a greater amount of funds certified is required. The schedule must classify responses and the financial assistance available for various classifications.~~ The department may establish minimum and maximum amounts of financial assistance to be provided to an emergency medical services operation under this section. If applications for financial assistance exceed the amount of allocated and available funds, the department may prorate the funds among the applicants in accordance with criteria adopted by the department. No more than one-half of the funds appropriated by the legislative assembly each biennium and allocated for training assistance may be distributed in the first year of the biennium. For emergency medical service operations subject to section 10 of this Act, after June 30, 2025, financial assistance provided by this section must be distributed to the political subdivision having ownership of the

licensed ambulance service or the political subdivision responsible for the emergency medical service program for the service area.

**SECTION 10.** A new section to chapter 23-27 of the North Dakota Century Code is created and enacted as follows:

**Required formation of rural ambulance service district - Organizational meeting - Exemption - Eligibility for relicensure.**

1. Emergency medical service operations licensed under this chapter as a basic life support or advanced life support ambulance service for which a territory has been assigned pursuant to this chapter does not include a city with a population greater than six thousand five hundred according to the 2020 census data published by the United States census bureau, and is not otherwise exempted, must conduct a rural ambulance service district organizational meeting pursuant to the procedure in 11-28.3-06 prior to June 30, 2025. After such organizational meeting the district shall be deemed organized and operating under the provisions of chapter 11-28.3.
2. The following licensed ambulance services are exempt from this section:
  - a. Licensed ambulance services that are county owned.
  - b. Licensed ambulance services that are city owned.
  - c. Licensed ambulance services that are part of a joint powers agreement with a city or county-owned ambulance.
  - d. Licensed ambulance services owned by tribal or federal government.
  - e. Existing rural ambulance service districts organized pursuant to chapter 11-28.3.
3. Ambulance services not in compliance with this section may not be eligible for relicensure under this chapter.

**SECTION 11. AMENDMENT.** Section 23-46-04 of the North Dakota Century Code is amended and reenacted as follows:

**23-46-04. State financial assistance for emergency medical services - Confidential information - Annual allocation.**

Emergency medical services operations that request financial assistance from the state must provide requested fiscal information to the department of health and human services for use in financial assistance determinations. All information provided to the department under this section is confidential. The department of health and human services shall determine annually the allocation amount of state financial assistance for each emergency medical services funding area based on the department's determination of the minimum annual funding necessary to operate the emergency medical services operation or service designated to operate in the ambulance funding area, based on the financial needs unique to each emergency medical services funding area. For emergency medical service operations subject to section 10 of this Act, after June 30, 2025, financial assistance provided by this section must be distributed to the political subdivision having ownership of the licensed ambulance service or the political subdivision responsible for the emergency medical service program for the service area.

**SECTION 12. AMENDMENT.** Section 57-15-50 of the North Dakota Century Code is amended and reenacted as follows:

**57-15-50. County emergency medical service levy.**

Upon petition of ten percent of the number of qualified electors of the county voting in the last election for governor or upon its own motion, the board of county commissioners of each county shall levy annually a tax not exceeding the limitation in subsection 10 of section 57-15-06.7, for the purpose of subsidizing county emergency medical services; provided, that this tax must be approved by a majority of the qualified electors of the county voting on the question at a regular or special countywide election. The county may budget, in addition to its annual operating budget for subsidizing emergency medical service, no more than ten percent of its annual operating budget as a depreciation expense to be set aside in a dedicated emergency medical services sinking fund deposited with the treasurer for the replacement of equipment and ambulances. The ten percent emergency medical services sinking fund must be in addition to the annual operating budget for subsidization, but the total of the annual operating budget and the annual ten percent emergency medical services sinking fund may not exceed the approved mill levy. If the county contains a rural ambulance service district or rural fire protection district that levies for and provides emergency medical service, the property within that district is exempt from the county tax levy under this section upon notice from the governing body of the district to the board of county commissioners of the existence of the district. After December 31, 2025, if a political subdivision having ownership of the licensed ambulance service or a political subdivision responsible for the emergency medical service program for the service area exists, special taxes levied under this section and distributed pursuant to section 23-27-04.7 must be distributed to the political subdivision.

**SECTION 13. EFFECTIVE DATE.** Section 4 of this Act is effective for taxable years beginning after December 31, 2024.

Approved April 20, 2023

Filed April 21, 2023

## CHAPTER 115

### HOUSE BILL NO. 1477

(Representatives Hatlestad, B. Anderson, Fegley, Heinert, Longmuir, M. Ruby)  
(Senator Larson)

AN ACT to amend and reenact sections 11-28.3-01 and 11-28.3-09, subsections 1 and 2 of section 11-28.3-15, and subsection 2 of section 11-28.3-16 of the North Dakota Century Code, relating to rural ambulance service districts; and to provide an appropriation.

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

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

##### **11-28.3-01. Territory to be organized - Petition.**

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

<sup>76</sup> **SECTION 2. AMENDMENT.** Section 11-28.3-09 of the North Dakota Century Code is amended and reenacted as follows:

##### **11-28.3-09. Emergency medical service policy - Levy - Financial report.**

1. The board of directors shall establish a general emergency medical service policy for the district and annually shall estimate the probable expense for carrying out that policy. The estimate must be certified by the president and secretary to the proper county auditor or county auditors, on or before ~~June thirtieth~~ August tenth of each year. In the year for which the levy is sought, a

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<sup>76</sup> Section 11-28.3-09 was also amended by section 4 of House Bill No. 1365, chapter 114.

board of directors of a rural ambulance service district seeking approval of a property tax levy under this chapter shall file with the county auditor of the counties within the rural ambulance service district, at a time and in a format prescribed by the county auditors, a financial report for the preceding calendar year showing the ending balances of each fund held by the rural ambulance service district during that year. The board or boards of county commissioners may levy a tax not to exceed the mill rate approved by the electors of the district under section 11-28.3-04. If the board wishes to levy a tax in excess of that approved by the electors, the board, upon its own motion, may place the question of increasing the maximum allowable mill levy for the electors to approve at a regular or special election. The amount levied under this section may not exceed a mill rate of fifteen mills upon the taxable property within the district for the maintenance of the rural ambulance service district for the fiscal year as provided by law. A rural ambulance service district may be dissolved by approval of electors of the district as provided in section 11-28.3-13.

2. The tax levied for a rural ambulance service district must be:
  - a. Collected as other taxes are collected in the county.
  - b. ~~Turned over to the secretary-treasurer of the rural ambulance service district, who must be bonded in the amount of at least five thousand dollars.~~
  - e. Deposited by the secretary-treasurer in a ~~state or national bank in a district~~bank or credit union account.
  - d-c. Paid out upon warrants drawn upon the district account by authority of the board of directors of the district, bearing the signature of the secretary-treasurer and the countersignature of the president.
3. The amount of the tax levy may not exceed the amount of funds required to defray the expenses of the district for a period of one year as embraced in the annual estimate of expense, including the amount of principal and interest upon the indebtedness of the district for the ensuing year. The district may include in its operating budget no more than ten percent of its annual operating budget as a depreciation expense to be set aside in a dedicated emergency medical services sinking fund deposited with the treasurer for the replacement of equipment and ambulances. The ten percent emergency medical services sinking fund may be in addition to the actual annual operating budget, but the total of the annual operating budget and the annual ten percent emergency medical services sinking fund shall not exceed the amount of revenue that would be generated by application of the maximum mill levy approved by the electors.

<sup>77</sup> **SECTION 3. AMENDMENT.** Subsection 1 of section 11-28.3-15 of the North Dakota Century Code is amended and reenacted as follows:

1. Any territory adjacent to the boundary of an existing ambulance district may be annexed to the district. If the territory to be annexed is ~~served by the district under section 57-40.6-10~~within the designated service area as established under subsection 1 of section 23-27-01, the board, upon its own motion, may annex the territory, ~~provided if~~ a majority of qualified electors residing in the

<sup>77</sup> Section 11-28.3-15 was also amended by section 4 of House Bill No. 1477, chapter 115.

existing and proposed territory approve of the annexation at a regular or special election.

<sup>78</sup> **SECTION 4. AMENDMENT.** Subsection 2 of section 11-28.3-15 of the North Dakota Century Code is amended and reenacted as follows:

2. If the area to be annexed is not ~~serviced by the district under section 57-40.6-10~~within the designated service area as established under subsection 1 of section 23-27-01, the proceedings for the annexation may be initiated by a presentation to the county auditor. If more than one county is in the proposed annexed territory, the auditor serving the larger portion shall coordinate with other county auditors to create a petition stating the desires and purposes of the petitioners signed by fifty qualified electors, or if there are not fifty qualified electors in the proposed territory, fifty percent of qualified electors residing within the boundaries of the territory. The petition must contain a description of the boundaries of the territory proposed to be annexed and must be accompanied by a map or plat and a deposit for publication costs.

<sup>79</sup> **SECTION 5. AMENDMENT.** Subsection 2 of section 11-28.3-16 of the North Dakota Century Code is amended and reenacted as follows:

2. Notwithstanding ~~section 57-40.6-10~~subsection 1 of section 23-27-01 designating an ambulance service area, the district is not obligated to maintain the withdrawn district within the primary response area of the district.

**SECTION 6. APPROPRIATION - COMMUNITY HEALTH TRUST FUND - DEPARTMENT OF HEALTH AND HUMAN SERVICES - EMERGENCY MEDICAL SERVICES AND RURAL AMBULANCE SERVICE DISTRICTS.** There is appropriated out of any moneys in the community health trust fund in the state treasury, not otherwise appropriated, the sum of \$7,000,000, or so much of the sum as may be necessary, to the department of health and human services for the purpose of aiding the functions and operations of rural emergency medical services and rural ambulance service districts, for the biennium beginning July 1, 2023, and ending June 30, 2025.

Approved April 27, 2023

Filed April 28, 2023

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<sup>78</sup> Section 11-28.3-15 was also amended by section 3 of House Bill No. 1477, chapter 115.

<sup>79</sup> Section 11-28.3-16 was also amended by section 6 of House Bill No. 1365, chapter 114.

# CORRECTIONS, PAROLE, AND PROBATION

## CHAPTER 116

### HOUSE BILL NO. 1473

(Representatives S. Olson, Bellew, Henderson, Hoverson, Prichard, Steiner,  
VanWinkle)  
(Senator Paulson)

AN ACT to create and enact a new section to chapter 12-44.1, a new section to chapter 12-46, a new section to chapter 12-47, and a new section to chapter 15-10 of the North Dakota Century Code, relating to the use of restrooms, locker rooms, and shower rooms in a dormitory or living facility controlled by the state board of higher education, a correctional facility, the North Dakota youth correctional center, and the penitentiary exclusively for males and females.

#### 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:

**Restrooms and shower rooms exclusively for males or exclusively for females.**

1. In a correctional facility, a restroom or shower room accessible by multiple inmates at the same time must be designated for use exclusively for males or exclusively for females.
2. In a correctional facility, a restroom or shower room designated for one sex may be used only by members of that sex.
3. An administrator or correctional facility staff member shall provide a reasonable accommodation for an inmate, including a transgender or gender-nonconforming inmate, as deemed appropriate by the administrator.

**SECTION 2.** A new section to chapter 12-46 of the North Dakota Century Code is created and enacted as follows:

**Restrooms and shower rooms exclusively for males or exclusively for females.**

1. At the North Dakota youth correctional center, a restroom or shower room accessible by multiple inmates at the same time must be designated for use exclusively for males or exclusively for females.
2. At the North Dakota youth correctional center, a restroom or shower room designated for one sex may be used only by members of that sex.

3. An administrator, an officer, or an employee shall provide a reasonable accommodation for a child placed at the North Dakota youth correctional center, including a transgender or gender-nonconforming child, as deemed appropriate by the administrator.

**SECTION 3.** A new section to chapter 12-47 of the North Dakota Century Code is created and enacted as follows:

**Restrooms and shower rooms exclusively for males or exclusively for females.**

1. At the penitentiary, a restroom or shower room accessible by multiple inmates at the same time must be designated for use exclusively for males or exclusively for females.
2. At the penitentiary, a restroom or shower room designated for one sex may be used only by members of that sex.
3. The warden, a deputy warden, an officer, or an agent shall provide a reasonable accommodation for an inmate, including a transgender or gender-nonconforming inmate, as deemed appropriate by the warden.

**SECTION 4.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

**Restrooms and shower rooms exclusively for males or exclusively for females.**

1. In a dormitory or living facility controlled by an institution under the control of the state board of higher education, a restroom or shower room accessible by multiple residents at the same time must be designated for use exclusively for males or exclusively for females.
2. In a dormitory or living facility controlled by an institution under the control of the state board of higher education, a restroom or shower room designated for one sex may be used only by members of that sex.
3. This section applies to a dormitory or a dormitory floor in which residents are segregated by sex or gender.
4. A dormitory administrator or dormitory staff member shall provide a reasonable accommodation for a resident, including a transgender or gender-nonconforming resident, as deemed appropriate by the director of residence life. This section does not prohibit a dormitory administrator or dormitory staff member from entering a restroom or shower room designated for the opposite sex in the course of official employment duties.

Approved April 25, 2023

Filed April 26, 2023

## CHAPTER 117

### HOUSE BILL NO. 1264

(Representatives Klemin, Cory, Hanson, Karls, Roers Jones)  
(Senators Braunberger, Dever, Dwyer, Elkin, Larson)

AN ACT to amend and reenact section 12-44.1-01 and subsection 3 of section 12-44.1-07.1 of the North Dakota Century Code, relating to jail and regional correctional center definitions and alternatives to physical custody of individuals; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 12-44.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **12-44.1-01. 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.
2. "Adult lockup" means a secure temporary-hold nonresidential facility that does not hold individuals overnight and includes a facility with cuffing rails or cuffing benches.
3. "Correctional facility" means a city or county jail or detention center, regional corrections center, or juvenile detention center for the detention or confinement of persons in accordance with law. The use of the term does not imply and may not be used to require the provision of services including treatment, counseling, career and technical education, or other educational services, except as may otherwise be required or provided for under this chapter.
4. "Correctional facility staff" means correctional personnel with titles such as jailer, deputy, counselor, correctional officer, or any other title, whose duties include the ongoing supervision of inmates in a correctional facility.
5. "Court holding facility" means a secure facility, other than an adult correctional facility or adult lockup, used to temporarily detain individuals before or after a detention hearing or other court proceedings, and is not used to detain individuals overnight.
6. "Individual justice planning" means a process to identify, accommodate, and develop appropriate consequences for behaviors caused by or related to an individual's mental or cognitive impairment.
7. "Inmate" means any individual, whether sentenced or unsentenced, who is detained or confined in a correctional facility. The term does not include an individual who is under the supervision of the correctional facility and is

supervised under home detention, electronic monitoring, or a similar program that does not involve physical detention or confinement in the facility.

- ~~7-8.~~ "Jail" means a correctional facility, including a county or city jail or a regional corrections center.
- ~~8-9.~~ "Juvenile detention center" means a publicly maintained correctional facility for the detention of juveniles. The term does not include the North Dakota youth correctional center.
- ~~9-10.~~ "Regional corrections center" means a correctional facility established and maintained by more than one county or city, or a combination of counties and cities, for the confinement of inmates.
- ~~10-11.~~ "Trained correctional facility staff" means correctional personnel who have completed a course of training approved by the peace officer standards and training board.

**SECTION 2. AMENDMENT.** Subsection 3 of section 12-44.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

3. The inmate population plan must include alternatives to physical custody of individuals under charge or conviction of an offense. Potential alternatives to physical custody include:
  - a. Placement in a community setting;
  - b. Work release;
  - c. Home detention;
  - d. Electronic home detention;
  - e. Global positioning system monitoring;
  - f. Medical, psychiatric, and drug and alcohol treatment;
  - g. Employment;
  - h. Pretrial risk assessment; ~~and~~
  - i. Pretrial supervision; and
  - j. Participation in the individual justice planning process.

Approved March 30, 2023

Filed April 3, 2023

## CHAPTER 118

### SENATE BILL NO. 2105

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

AN ACT to amend and reenact subsection 8 of section 12-47-21 of the North Dakota Century Code, relating to use of wireless electronic communications devices at the department of corrections and rehabilitation; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 8 of section 12-47-21 of the North Dakota Century Code is amended and reenacted 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 as authorized by the department of corrections and rehabilitation.
- 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 as authorized by the department of corrections and rehabilitation.
- c. A violation of this subsection is a class C felony.

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 119

### SENATE BILL NO. 2091

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

AN ACT to create and enact a new subsection to section 12-47-36 of the North Dakota Century Code, relating to exceptions to confidential records.

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

**SECTION 1.** A new subsection to section 12-47-36 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other provision of law relating to privilege or confidentiality, except for the confidentiality requirements of federal drug and alcohol treatment and rehabilitation laws, if the department of corrections and rehabilitation approves, the following individuals, organizations, or agencies without prior application to the court may inspect case history, medical, psychological, or treatment records:

- a. The emergency contact or next of kin of an adult in custody who has a serious or terminal medical condition;
- b. The guardian, conservator, or an individual with a medical power of attorney of an adult in custody or adult under supervision;
- c. If an adult in custody or former adult in custody provides written authorization, an individual, organization, or entity assisting the adult in custody or former adult in custody with social services, housing, behavioral health or medical services, employment, education, child care, or transportation; and
- d. The court.

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 120

### SENATE BILL NO. 2076

(Energy and Natural Resources Committee)  
(At the request of the Department of Environmental Quality)

AN ACT to amend and reenact subdivision vv of subsection 2 of section 12-60-24 and section 23.1-01-11.1 of the North Dakota Century Code, relating to environmental compliance background reviews of applicants for a radioactive materials license or solid waste permit.

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

<sup>80</sup> **SECTION 1. AMENDMENT.** Subdivision vv of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- vv. The department of environmental quality for a final applicant for a job opening ~~or~~ a current employee with the department; ~~an individual being investigated by the department;~~ or, when requested by the department, an applicant for a radioactive materials license under chapter 23.1-03 or a solid waste permit under chapter 23.1-08 as provided in section 23.1-01-11.1.

**SECTION 2. AMENDMENT.** Section 23.1-01-11.1 of the North Dakota Century Code is amended and reenacted as follows:

#### 23.1-01-11.1. Criminal history background checks.

The

1. As part of an environmental compliance background review, the department may require an applicant for a radioactive materials license under chapter 23.1-03 or a solid waste permit under chapter 23.1-08 to complete a ~~state~~statewide and nationwide criminal history record check as provided in section 12-60-24. If the applicant is not an individual, the department may require an individual responsible for the applicant to complete a state and a nationwide criminal history record check as provided in section 12-60-24. The applicant ~~or~~ responsible individual shall submit personal information and fingerprints with the application necessary to complete the ~~state~~statewide and nationwide criminal history background record check in the manner provided in subsection 1 of section 12-60-24. All costs associated with the ~~state~~statewide and nationwide criminal history record check are the responsibility of the applicant.
2. For purposes of this section, an "applicant" means the person applying for the license or permit, and includes:

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<sup>80</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1191, chapter 447, section 1 of Senate Bill No. 2051, chapter 274, and section 1 of Senate Bill No. 2102, chapter 214.

- a. Each entity as defined in subsection 7 of section 10-01.1-02 that is, or is proposed to be:
    - (1) A partner in a partnership as defined in subsection 19 of section 45-13-01;
    - (2) An entity holding ten percent or more of the applicant's debt;
    - (3) An entity holding ten percent or more of the applicant's equity; or
    - (4) The parent of a corporation as defined in subsection 46 of section 10-19.1-01.
  - b. Each individual who has, or is proposed to have, any of the following relationships with the applicant:
    - (1) A board member as defined in subsection 8 of section 10-19.1-01;
    - (2) A partner in a partnership as defined in subsection 19 of section 45-13-01;
    - (3) An officer as defined in section 10-15-29 or 10-19.1-52;
    - (4) A radiation safety officer as defined in North Dakota Administrative Code subsection 34 of section 33.1-10-01-04;
    - (5) A holder of ten percent or more of the applicant's debt; or
    - (6) A holder of ten percent or more of the applicant's equity.
3. The department may deny an application for the issuance, renewal, transfer, or major modification of a license or permit based on its environmental compliance background review.
- a. Reasons for denial include:
    - (1) The applicant has intentionally misrepresented or concealed any material fact in a statement required under this section;
    - (2) The applicant has been convicted of a felony or pleaded guilty or nolo contendere to a felony involving the laws of any state or the federal government within five years preceding the application;
    - (3) The applicant has been adjudicated in contempt of an order of any court enforcing the laws of this state or any other state or the federal government within five years preceding the application; or
    - (4) The applicant has repeatedly violated any state or federal environmental protection laws.
  - b. The department also shall consider the relevance of the offense to the business to which the license or permit is issued, the nature and seriousness of the offense, the circumstances under which the offense occurred, the date of the offense, and the ownership and management structure in place at the time of the offense.

Approved April 4, 2023

Filed April 5, 2023

## CHAPTER 121

### HOUSE BILL NO. 1203

(Representatives Porter, Heinert, Karls)  
(Senators Dever, Kannianen, Larson)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-63-04 of the North Dakota Century Code, relating to powers of the peace officer standards and training board; and to amend and reenact section 12-63-01 and subsection 1 of section 12-63-02.3 of the North Dakota Century Code, relating to reserve peace officer licenses.

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

**SECTION 1. AMENDMENT.** Section 12-63-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **12-63-01. Definitions.**

As used in this chapter:

1. "Board" means the peace officer standards and training board.
2. "Part-time peace officer license" means a license issued to an individual authorized by law or appointed by a criminal justice agency of this state on a salaried or nonsalaried basis to enforce the law and to conduct or engage in investigations of violations of the law for no more than an average of twenty hours per week, not including time spent on call when no call to active duty is received, calculated on an annual basis.
3. "Peace officer" means a public servant authorized by law or by government agency or branch to enforce the law and to conduct or engage in investigations of violations of the law.
4. "Reserve peace officer license" means a license issued to an individual authorized by law or appointed by a criminal justice agency of this state on a salaried or nonsalaried basis to enforce the law and to conduct or engage in investigations of violations of the law within the scope of the reserve peace officer's training.

**SECTION 2. AMENDMENT.** Subsection 1 of section 12-63-02.3 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in this section, all provisions of this chapter apply to licensed reserve peace officers ~~and a licensed reserve peace officer has the same authority as a licensed peace officer.~~

**SECTION 3.** A new subdivision to subsection 2 of section 12-63-04 of the North Dakota Century Code is created and enacted as follows:

Expend funds to sponsor training for instruction of licensees, including up to fifty thousand dollars annually from fees collected by the board.

Approved March 22, 2023

Filed March 23, 2023



# CRIMINAL CODE

## CHAPTER 122

### SENATE BILL NO. 2150

(Senators Myrdal, Boehm, Luick)  
(Representatives Porter, Rohr, M. Ruby)

AN ACT to create and enact a new chapter to title 12.1 of the North Dakota Century Code, relating to abortions; to amend and reenact sections 14-02.1-01, 14-02.1-02, 14-02.1-02.1, 14-02.1-02.2, 14-02.1-03, 14-02.1-03.1, 14-02.1-04, and 14-02.1-07, and subsection 1 of section 43-17-31 of the North Dakota Century Code, relating to abortion and grounds for disciplinary action imposed against a physician; to repeal sections 12.1-31-12, 14-02.1-04.1, 14-02.1-04.2, 14-02.1-05.1, 14-02.1-05.2, and 14-02.1-05.3 of the North Dakota Century Code, relating to abortions, sex-selective abortions, genetic abnormality abortions, human dismemberment abortions, and abortions after a detectable heartbeat; to provide a penalty; and to declare an emergency.

#### 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:

##### **Definitions.**

As used in this chapter:

1. "Abortion" means the act of using, selling, or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman, including the elimination of one or more unborn children in a multifetal pregnancy, with knowledge the termination by those means will with reasonable likelihood cause the death of the unborn child. The use, sale, prescription, or means is not an abortion if done with the intent to:
  - a. Remove a dead unborn child caused by spontaneous abortion;
  - b. Treat a woman for an ectopic pregnancy; or
  - c. Treat a woman for a molar pregnancy.
2. "Physician" means an individual licensed to practice medicine or osteopathy under chapter 43-17 or a physician who practices in the armed services of the United States or in the employ of the United States.
3. "Probable gestational age of the unborn child" means what, in reasonable medical judgment, will with reasonable probability be the gestational age of the unborn child.

4. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
5. "Serious health risk" means a condition that, in reasonable medical judgment, complicates the medical condition of the pregnant woman so that it necessitates an abortion to prevent substantial physical impairment of a major bodily function, not including any psychological or emotional condition. The term may not be based on a claim or diagnosis that the woman will engage in conduct that will result in her death or in substantial physical impairment of a major bodily function.

#### **Abortion prohibited - Penalty.**

It is a class C felony for a person, other than the pregnant female upon whom the abortion was performed, to perform an abortion.

#### **Exceptions.**

This chapter does not apply to:

1. An abortion deemed necessary based on reasonable medical judgment which was intended to prevent the death or a serious health risk to the pregnant female.
2. An abortion to terminate a pregnancy that based on reasonable medical judgment resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20, if the probable gestational age of the unborn child is six weeks or less.
3. An individual assisting in performing an abortion if the individual was acting within the scope of that individual's regulated profession, was under the direction of or at the direction of a physician, and did not know the physician was performing an abortion in violation of this chapter.

**SECTION 2. AMENDMENT.** Section 14-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **14-02.1-01. Purpose.**

The purpose of this chapter is to protect unborn and promote human life and maternal health within present constitutional limits when the performance of an abortion is not otherwise prohibited by law. #This chapter reaffirms the tradition of the state of North Dakota to protect every human life whether unborn or aged, healthy or sick.

**SECTION 3. 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 act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable ~~intrauterine~~ pregnancy of a woman, including the

elimination of one or more unborn children in a multifetal pregnancy, with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:

- a. ~~Save the life or preserve the health of the unborn child;~~
  - b. Remove a dead unborn child caused by spontaneous abortion; ~~or~~
  - ~~e-b.~~ Treat a woman for an ectopic pregnancy; or
    - c. Treat a woman for a molar pregnancy.
2. "Abortion facility" means a clinic, ambulatory surgical center, physician's office, or any other place or facility in which abortions are performed or prescribed, other than a hospital.
  3. "Abortion-inducing drug" means a medicine, drug, or any other substance prescribed or dispensed with the intent of causing an abortion.
  4. ~~"Down syndrome" refers to a chromosome disorder associated with an extra chromosome twenty one, in whole or in part, or an effective trisomy for chromosome twenty one.~~
  5. "Drug label" means the pamphlet accompanying an abortion-inducing drug which outlines the protocol tested and authorized by the federal food and drug administration and agreed upon by the drug company applying for the federal food and drug administration authorization of that drug. Also known as "final printing labeling instructions", drug label is the federal food and drug administration document that delineates how a drug is to be used according to the federal food and drug administration approval.
  - ~~6-5.~~ "Fertilization" means the fusion of a human spermatozoon with a human ovum.
    7. ~~"Genetic abnormality" means any defect, disease, or disorder that is inherited genetically. The term includes any physical disfigurement, scoliosis, dwarfism, Down syndrome, albinism, amelia, or any other type of physical or mental disability, abnormality, or disease.~~
  - ~~8-6.~~ "Hospital" means an institution licensed by the department of health and human services under chapter 23-16 and any hospital operated by the United States or this state.
  - ~~9-7.~~ "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.
  - ~~10-8.~~ "Infant born alive" 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.
  - ~~14-9.~~ "Informed consent" means voluntary consent to abortion by the woman upon whom the abortion is to be performed or induced provided:

- 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;
  - (3) The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, danger to subsequent pregnancies, and infertility;
  - (4) The probable gestational age of the unborn child at the time the abortion is to be performed; and
  - (5) The medical risks associated with carrying her child to term.
- b. The woman is informed, by the physician or the physician's agent, at least twenty-four hours before the abortion:
  - (1) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care and that more detailed information on the availability of that assistance is contained in the printed materials given to her as described in section 14-02.1-02.1;
  - (2) That the printed materials given to her and described in section 14-02.1-02.1 describe the unborn child and list agencies that offer alternatives to abortion;
  - (3) That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion; and
  - (4) That she is free to withhold or withdraw her consent to the abortion at any time without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she might otherwise be entitled; and
  - (5) ~~That it may be possible to reverse the effects of an abortion-inducing drug if she changes her mind, but time is of the essence, and information and assistance with reversing the effects of an abortion-inducing drug are available in the printed materials given to her as described in section 14-02.1-02.1.~~
- c. The woman certifies in writing, ~~prior to~~before the abortion, that the information described in subdivisions a and b has been furnished to her.
- d. Before the performance of the abortion, the physician who is to perform or induce the abortion or the physician's agent receives a copy of the written certification prescribed by subdivision c.
- e. The physician has not received or obtained payment for a service provided to a patient who has inquired about an abortion or has scheduled an abortion before the twenty-four-hour period required by this section.

- ~~42-10. "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates an immediate abortion of her pregnancy without first determining postfertilization age to avertprevent her death or for which the delay necessary to determine postfertilization age will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditionsa serious health risk. A condition may not be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct that she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.~~
- 43-11. "Physician" means an individual who is licensed to practice medicine or osteopathy under chapter 43-17 or a physician who practices in the armed services of the United States or in the employ of the United States.
- ~~44-12. "Postfertilization age" means the age of the unborn child as calculated from fertilization.~~
45. "Probable gestational age of the unborn child" means what, in reasonable medical judgment, will with reasonable probability be the gestational age of the unborn child at the time the abortion is planned to be performed.
- ~~46. "Probable postfertilization age of the unborn child" means what, in reasonable medical judgment, will with reasonable probability be the postfertilization age of the unborn child at the time the abortion is planned to be performed or induced.~~
- 47-13. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
- ~~48-14. "Serious health risk" means a condition that, in reasonable medical judgment, complicates the medical condition of the pregnant woman so that it necessitates an abortion to prevent substantial physical impairment of a major bodily function, not including any psychological or emotional condition. The term may not be based on a claim or diagnosis that the woman will engage in conduct that will result in her death or in substantial physical impairment of a major bodily function.~~
15. "Unborn child" means the offspring of human beings from conception until birth.
- 49-16. "Viable" means the ability of an unborn child to live outside the mother's womb, albeit with artificial aid.

**SECTION 4. AMENDMENT.** Section 14-02.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.1-02.1. Printed information - Referral service.**

1. The department of health and human services shall publish in English, and in every other language that the department determines is the primary language of a significant number of state residents, the following easily comprehensible printed materials:

- a. Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies. The materials must include a comprehensive list of the agencies available, a description of the services they offer and a description of the manner, including telephone numbers, in which they might be contacted, or, at the option of the department, printed materials, including a toll-free, twenty-four-hour-a-day telephone number that may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer. The materials must state that it is unlawful for any individual to coerce a woman to undergo an abortion and that if a minor is denied financial support by the minor's parent, guardian, or custodian due to the minor's refusal to have an abortion performed, the minor is deemed to be emancipated for the purposes of eligibility for public assistance benefits, except that those benefits may not be used to obtain an abortion. The materials also must state that any physician who performs an abortion upon a woman without her informed consent may be liable to her for damages in a civil action and that the law permits adoptive parents to pay costs of prenatal care, childbirth, and neonatal care. The materials must include the following statement: There are many public and private agencies willing and able to help you to carry your child to term and to assist you and your child after your child is born, whether you choose to keep your child or to place your child for adoption. The state of North Dakota strongly urges you to contact one or more of these agencies before making a final decision about abortion. The law requires that your physician or your physician's agent give you the opportunity to call agencies like these before you undergo an abortion.
- b. Materials, published in a booklet format, designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including any relevant information on the possibility of the survival of the unborn child and color photographs of the development of an unborn child at two-week gestational increments. The descriptions must include information about brain and heart function, the presence of external members and internal organs during the applicable states of development, and any relevant information on the possibility of the unborn child's survival. The materials must be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages. The materials required under this subsection must be reviewed, updated, and reprinted as needed.
- c. Materials that include information on the support obligations of the father of a child who is born alive, including the father's legal duty to support his child, which may include child support payments and health insurance, and the fact that paternity may be established by the father's signature on an acknowledgment of paternity or by court action. The printed material must also state that more information concerning paternity establishment and child support services and enforcement may be obtained by calling state public assistance agencies or human service zones.
- d. Materials that contain objective information describing the various surgical and drug-induced methods of abortion as well as the immediate and long-

term medical risks commonly associated with each abortion method, including the risks of infection, hemorrhage, cervical or uterine perforation or rupture, danger to subsequent pregnancies, the possible increased risk of breast cancer, the possible adverse psychological effects associated with an abortion, and the medical risks associated with carrying a child to term.

- e. Materials including information it may be possible to reverse the effects of an abortion-inducing drug but time is of the essence. The materials must include information directing the patient where to obtain further information and assistance in locating a medical professional who can aid in the reversal of abortion-inducing drugs, such as mifepristone and misoprostol.

- f. Materials including a notice that the performance of certain abortions is prohibited by law.

2. The materials required under subsection 1 must be available at no cost from the department of health and human services upon request and in appropriate number to any person, facility, or hospital, and, except for copyrighted material, must be available on the department's internet website. The department may make the copyrighted material available on its internet website if the department pays the copyright royalties.

**SECTION 5. AMENDMENT.** Section 14-02.1-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.1-02.2. Abortion report form.**

The department of health and human services shall prepare an abortion compliance report form and an abortion data report form to be used by the physician for each abortion performed, as required by section 14-02.1-07. The abortion compliance report form must include a checklist designed to confirm compliance with all provisions of this chapter, chapter 14-02.3, chapter 14-02.6, and section 23-16-14. The abortion data report form must include the:

1. The data called for in the United States standard report of induced termination of pregnancy as recommended by the national center for health statistics; and
2. Whether the abortion was:
  - a. Necessary in reasonable medical judgment and was intended to prevent the death of the pregnant female;
  - b. To terminate a pregnancy that resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20; or
  - c. Necessary to prevent a serious health risk.

**SECTION 6. AMENDMENT.** Section 14-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.1-03. Consent to abortion - Notification requirements.**

1. ~~No~~ A physician shall ~~may not~~ perform an abortion unless ~~prior to~~ before such performance the physician certified in writing that the woman gave her

informed consent as defined and provided in section 14-02.1-02 and shall certify in writing the pregnant woman's marital status and age based upon proof of age offered by her. Before the period of pregnancy when the unborn child may reasonably be expected to have reached viability, an abortion may not be performed upon an unemancipated minor unless the attending physician certifies in writing that each of the parents of the minor requesting the abortion has been provided by the physician in person with the information provided for in section 14-02.1-02 at least twenty-four hours before the minor's consent to the performance of abortion or unless the attending physician certifies in writing that the physician has caused materials of section 14-02.1-02 to be posted by certified mail to each of the parents of the minor separately to the last-known addresses at least forty-eight hours ~~prior to~~before the minor's consent to the performance of abortion. If a parent of the minor has died or rights and interests of that parent have been legally terminated, this subsection applies to the sole remaining parent. When both parents have died or the rights and interests of both parents have been legally terminated, this subsection applies to the guardian or other person standing in loco parentis. Notification by the attending physician is not required if the minor elects not to allow the notification of one or both parents or her guardian and the abortion is authorized by the juvenile court in accordance with section 14-02.1-03.1. None of the requirements of this subsection apply in the case of a medical emergency, except that when a medical emergency compels the performance of an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to ~~avert~~prevent her death or ~~for which a twenty-four-hour delay will create grave peril of immediate and irreversible loss of major bodily function~~prevent a serious health risk, and shall certify those indications in writing.

2. Subsequent to the period of pregnancy when the unborn child may reasonably be expected to have reached viability, ~~no~~an abortion, other than an abortion necessary to preserve her life, or ~~because the continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health to prevent a serious health risk~~, may not be performed upon any woman in the absence of:
  - a. ~~The written consent of her husband unless her husband is voluntarily separated from her; or~~
  - b. ~~The~~ the written consent of a parent, if living, or the custodian or legal guardian of the woman, if the woman is unmarried and under eighteen years of age.
3. No executive officer, administrative agency, or public employee of the state of North Dakota or any local governmental body has power to issue any order requiring an abortion, nor shall any such officer or entity coerce any woman to have an abortion, nor shall any other person coerce any woman to have an abortion.

**SECTION 7. AMENDMENT.** Section 14-02.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.1-03.1. Parental consent or judicial authorization for abortion of unmarried minor - Statement of intent.**

The legislative assembly intends to encourage unmarried pregnant minors to seek the advice and counsel of their parents when faced with the difficult decision of whether or not to bear a child, to foster parental involvement in the making of that decision when parental involvement is in the best interests of the minor and to do so in a manner that does not unduly burden the right to seek an abortion.

1. ~~No~~ person may not knowingly perform an abortion upon a pregnant woman under the age of eighteen years unless:
  - a. The attending physician has secured the written consent of the minor woman and both parents, if living, or the surviving parent if one parent is deceased, or the custodial parent if the parents are separated or divorced, or the legal guardian or guardians if the minor is subject to guardianship;
  - b. The minor woman is married and the attending physician has secured her informed written consent; or
  - c. The abortion has been authorized by the juvenile court in accordance with the provisions of this section.
2. Any pregnant woman under the age of eighteen or next friend is entitled to apply to the juvenile court for authorization to obtain an abortion without parental consent. All proceedings on such application must be conducted in the juvenile court of the county of the minor's residence before a juvenile judge or referee, if authorized by the juvenile court judge in accordance with the provisions of chapter 27-05, except that the parental notification requirements of rules 3, 4, and 5 of the North Dakota Rules of Juvenile Procedure are not applicable to proceedings under this section. A court may change the venue of proceedings under this section to another county only upon finding that a transfer is required in the best interests of the minor. All applications in accordance with this section must be heard by a juvenile judge or referee within forty-eight hours, excluding Saturdays and Sundays, of receipt of the application. The juvenile judge or referee shall find by clear and convincing evidence:
  - a. Whether or not the minor is sufficiently mature and well informed with regard to the nature, effects, and possible consequences of both having an abortion and bearing her child to be able to choose intelligently among the alternatives.
  - b. If the minor is not sufficiently mature and well informed to choose intelligently among the alternatives without the advice and counsel of her parents or guardian, whether or not it would be in the best interests of the minor to notify her parents or guardian of the proceedings and call in the parents or guardian to advise and counsel the minor and aid the court in making its determination and to assist the minor in making her decision.
  - c. If the minor is not sufficiently mature and well informed to choose intelligently among the alternatives and it is found not to be in the best interests of the minor to notify and call in her parents or guardian for advice and counsel, whether an abortion or some other alternative would be in the best interests of the minor.
3. All proceedings in connection with this section must be kept confidential and the identity of the minor must be protected in accordance with provisions relating to all juvenile court proceedings. This section does not limit the

release, upon request, of statistical information regarding applications made under this section and their disposition.

4. The court shall keep a stenographic or mechanically recorded record of the proceedings which must be maintained on record for forty-eight hours following the proceedings. If no appeal is taken from an order of the court pursuant to the proceedings, the record of the proceedings must be sealed as soon as practicable following such forty-eight-hour period.
5. Following the hearing and the court's inquiry of the minor, the court shall issue one of the following orders:
  - a. If the minor is sufficiently mature and well informed concerning the alternatives and without the need for further information, advice, or counseling, the court shall issue an order authorizing a competent physician to perform the abortion procedure on the minor.
  - b. If the minor is not sufficiently mature and well informed, the court may:
    - (1) Issue an order to provide the minor with any necessary information to assist her in her decision if the minor is mature enough to make the decision but not well informed enough to do so.
    - (2) Issue an order to notify the minor's parents or guardian of the pendency of the proceedings and calling for their attendance at a reconvening of the hearing in order to advise and counsel the minor and assist the court in making its determination if the court finds that to do so would be in the best interests of the minor and the pregnancy resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20.
    - (3) Issue an order authorizing an abortion by a competent physician if the court has determined that it would not be in the best interests of the minor to call in her parents or guardian but has found that it would be in the minor's best interests to authorize the abortion.
6. The minor or next friend may appeal the determination of the juvenile court directly to the state supreme court. In the event of such an appeal, any and all orders of the juvenile court must be automatically stayed pending determination of the issues on appeal. Any appeal taken pursuant to this section by anyone other than the minor or next friend must be taken within forty-eight hours of the determination of the juvenile court by the filing of written notice with the juvenile court and a written application in the supreme court. Failure to file notice and application within the prescribed time results in a forfeiture of the right to appeal and render the juvenile court order or orders effective for all intents and purposes.
7. Upon receipt of written notice of appeal, the juvenile court shall immediately cause to be transmitted to the supreme court the record of proceedings had in the juvenile court.
8. An application for appeal pursuant to this section must be treated as an expedited appeal by the supreme court and must be set down for hearing within four days of receipt of the application, excluding Saturdays and Sundays.

9. The hearing, inquiry, and determination of the supreme court must be limited to a determination of the sufficiency of the inquiry and information considered by the juvenile court and whether or not the order or orders of the juvenile court accord with the information considered with respect to the maturity and information available to the minor and the best interests of the minor as determined by the juvenile court. The determination of the juvenile court may not be overturned unless found to be clearly erroneous.
10. After hearing the matter the supreme court shall issue its decision within twenty-four hours.
11. Within forty-eight hours of the hearing by the supreme court, the record of the juvenile court must be returned to the juvenile court and the juvenile court shall seal it at the earliest practicable time.
12. Nothing in this section may be construed to prevent the immediate performance of an abortion on an unmarried minor woman in ~~an~~ a ~~medical emergency where such action is necessary to preserve her life and no physician may be prevented from acting in good faith in such circumstances or made to suffer any sanction thereby other than those applicable in the normal course of events to the general review of emergency and nonemergency medical procedures.~~
13. Nothing in this section may be construed to alter the effects of any other section of this chapter or to expand the rights of any minor to obtain an abortion beyond the limits to such rights recognized under the Constitution of the United States or under other provisions of this code.

**SECTION 8. 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. An abortion may not be performed by any person other than a physician who is using applicable medical standards and who is licensed to practice in this state. All physicians performing abortion procedures must have admitting privileges at a hospital located within thirty miles [42.28 kilometers] of the abortion facility and staff privileges to replace hospital on-staff physicians at that hospital. These privileges must include the abortion procedures the physician will be performing at abortion facilities. An abortion facility must have a staff member trained in cardiopulmonary resuscitation present at all times when the abortion facility is open and abortions are scheduled to be performed.
2. After the first twelve weeks of pregnancy but ~~prior to~~ before the time at which the unborn child may reasonably be expected to have reached viability, ~~no~~ an abortion may not be performed in any facility other than a licensed hospital.
3. ~~After the point in pregnancy when the unborn child 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 unborn child. 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 unborn child, and accurately portray the presence of external members and internal organs, including the heartbeat, if present or viewable, of the unborn child. 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.
- ~~5.4.~~ Any physician who performs an abortion without complying with the provisions of this section is guilty of a class A misdemeanor.
- ~~6.5.~~ 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 9. 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 data reports, adverse event reports, abortion compliance reports, and complication reports. All abortion facilities shall keep the following records:

- (1) The number of women who availed themselves of the opportunity to receive and view an ultrasound image of their unborn children 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.

(2) Postfertilization age:

- (a) ~~If a determination of probable postfertilization age was not made,~~ the basis of the determination that a medical emergency existed record of the probable gestational age of the unborn child at the time of the abortion. If a probable gestational age of the unborn

child was not made because of a medical emergency, the record must include the basis of the determination that a medical emergency existed.

~~(b) If the probable postfertilization age was determined to be twenty or more weeks and an abortion was performed, the basis of the determination that a medical emergency existed.~~

- 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 department of health and human services only for gathering statistical data and ensuring compliance with the provisions of this chapter.
- c. Records must be maintained in the permanent files of the hospital or abortion facility for a period of not less than seven years.

## 2. Reporting:

- a. An individual abortion compliance report and an individual abortion data report for each abortion performed upon a woman must be completed by her attending physician. The abortion data report must be confidential and may not contain the name of the woman. The abortion data report 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 and whether:

(1) The abortion was performed to prevent the death of the pregnant female;

(2) The pregnancy resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20; or

(3) Necessary due to a medical emergency.

- b. All abortion compliance reports must be signed by the attending physician within twenty-four hours and submitted to the department of health and human services within ten business days from the date of the abortion. All abortion data and complication reports must be signed by the attending physician and submitted to the department of health and human services within thirty days from the date of the abortion. If a physician provides an abortion-inducing drug to another for the purpose of inducing an abortion and the physician knows that the individual experiences during or after the use an adverse event, the physician shall provide a written report of the adverse event within thirty days of the event to the department of health and human services and the federal food and drug administration via the medwatch reporting system. For purposes of this section, "adverse event" is defined based upon the federal food and drug administration criteria given in the medwatch reporting system. If a determination of probable postfertilization gestational age of the unborn child was not made, the abortion compliance report must state the basis of the determination that a medical emergency existed. ~~If the probable postfertilization age was determined to be twenty or more weeks and an abortion was performed,~~

~~the abortion compliance report must state the basis of the determination that a medical emergency existed.~~

- c. A copy of the abortion report, any complication report, and any adverse event 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 department of health and human services 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 department of health and human services is responsible for collecting all abortion compliance reports, abortion data reports, complication reports, and adverse event reports and collating and evaluating all data gathered from these reports and shall annually publish a statistical report based on data from abortions performed in the previous calendar year. All abortion compliance reports received by the department of health and human services are public records. Except for disclosure to a law enforcement officer or state agency, the department may not disclose an abortion compliance report without first removing any individually identifiable health information and any other demographic information, including race, marital status, number of previous live births, and education regarding the woman upon whom the abortion was performed.
- e. The department of health and human services shall report to the attorney general any apparent violation of this chapter.

<sup>81</sup> **SECTION 10. AMENDMENT.** Subsection 1 of section 43-17-31 of the North Dakota Century Code is amended and reenacted as follows:

1. Disciplinary action may be imposed against a physician upon any of the following grounds:
  - a. The use of any false, fraudulent, or forged statement or document, or the use of any fraudulent, deceitful, dishonest, or immoral practice, in connection with any of the licensing requirements.
  - b. The making of false or misleading statements about the physician's skill or the efficacy of any medicine, treatment, or remedy.
  - c. The conviction of any misdemeanor determined by the board to have a direct bearing upon a person's ability to serve the public as a practitioner of medicine or any felony. A license may not be withheld contrary to the provisions of chapter 12.1-33.
  - d. Habitual use of alcohol or drugs.
  - e. Physical or mental disability materially affecting the ability to perform the duties of a physician in a competent manner.
  - f. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public.

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<sup>81</sup> Section 43-17-31 was also amended by section 21 of Senate Bill No. 2115, chapter 382.

- g. Obtaining any fee by fraud, deceit, or misrepresentation.
- h. Aiding or abetting the practice of medicine by an unlicensed, incompetent, or impaired person.
- i. The violation of any provision of a medical practice act or the rules and regulations of the board, or any action, stipulation, condition, or agreement imposed by the board or its investigative panels.
- j. The practice of medicine under a false or assumed name.
- k. The advertising for the practice of medicine in an untrue or deceptive manner.
- l. The representation to a patient that a manifestly incurable condition, sickness, disease, or injury can be cured.
- m. The willful or negligent violation of the confidentiality between physician and patient, except as required by law.
- n. The failure of a doctor of osteopathy to designate that person's school of practice in the professional use of that person's name by such terms as "osteopathic physician and surgeon", "doctor of osteopathy", "D.O.", or similar terms.
- o. Gross negligence in the practice of medicine.
- p. Sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine.
- q. The prescription, sale, administration, distribution, or gift of any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than medically accepted therapeutic purposes.
- r. The payment or receipt, directly or indirectly, of any fee, commission, rebate, or other compensation for medical services not actually or personally rendered, or for patient referrals; this prohibition does not affect the lawful distributions of professional partnerships, corporations, limited liability companies, or associations.
- s. The failure to comply with the reporting requirements of section 43-17.1-05.1.
- t. The failure to transfer medical records to another physician or to supply copies of those records to the patient or to the patient's representative when requested to do so by the patient or the patient's designated representative, except if the disclosure is otherwise limited or prohibited by law. A reasonable charge for record copies may be assessed.
- u. A continued pattern of inappropriate care as a physician, including unnecessary surgery.
- v. The use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine.

- w. The prescribing, selling, administering, distributing, or giving to oneself or to one's spouse or child any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug.
- x. The violation of any state or federal statute or regulation relating to controlled substances.
- y. The imposition by another state or jurisdiction of disciplinary action against a license or other authorization to practice medicine based upon acts or conduct by the physician that would constitute grounds for disciplinary action as set forth in this section. A certified copy of the record of the action taken by the other state or jurisdiction is conclusive evidence of that action.
- z. The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.
- aa. The failure to properly monitor a fluoroscopy technologist or an emergency medical technician.
- bb. The failure to furnish the board or the investigative panel, their investigators, or representatives information legally requested by the board or the investigative panel.
- cc. ~~The performance of an abortion on a pregnant woman prior to determining if the unborn child the pregnant woman is carrying has a detectable heartbeat, as provided in subsection 1 of section 14-02.1-05.1.~~
- dd. Noncompliance with the physician health program established under chapter 43-17.3.

**SECTION 11. REPEAL.** Sections 12.1-31-12, 14-02.1-04.1, 14-02.1-04.2, 14-02.1-05.1, 14-02.1-05.2, and 14-02.1-05.3 of the North Dakota Century Code are repealed.

**SECTION 12. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 24, 2023

Filed April 24, 2023

## CHAPTER 123

### HOUSE BILL NO. 1350

(Representatives Koppelman, Christensen, Kasper, Rios, Roers Jones, Vetter)  
(Senators Luick, Paulson)

AN ACT to amend and reenact sections 12.1-01-04, 12.1-32-02.1, and 62.1-01-01, and subsection 1 of section 62.1-02-01 of the North Dakota Century Code, relating to criminal code definitions, weapons definitions, mandatory prison terms for armed offenders, and persons who are not to possess firearms; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 12.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **12.1-01-04. General definitions.**

As used in this title, unless a different meaning plainly is required:

1. "Act" or "action" means a bodily movement, whether voluntary or involuntary.
2. "Acted", "acts", and "actions" include, where relevant, "omitted to act" and "omissions to act".
3. "Actor" includes, where relevant, a person guilty of an omission.
4. "Bodily injury" means any impairment of physical condition, including physical pain.
5. "Court" means any of the following courts: the supreme court, a district court, and where relevant, a municipal court.
6. "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slingshot; any bow and arrow, crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO<sub>2</sub> gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.
7. "Destructive device" means any explosive, incendiary or poison gas bomb, grenade, mine, rocket, missile, or similar device.
8. "Explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electric circuit breakers), detonators and other detonating agents, smokeless powders, and any chemical compounds, mechanical mixture, or other ingredients in such proportions, quantities, or packing that ignition by fire, by friction, by

concussion, by percussion, or by detonation of the compound, or material, or any part thereof may cause an explosion.

9. "Firearm" means any weapon that will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such weapon, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon.
10. "Force" means physical action.
11. "Government" means:
  - a. The government of this state or any political subdivision of this state;
  - b. Any agency, subdivision, or department of the state or any political subdivision of the state, including the executive, legislative, and judicial branches;
  - c. Any corporation or other entity established by law to carry on any governmental function; and
  - d. Any commission, corporation, or agency established by statute, compact, or contract between or among governments for the execution of intergovernmental programs.
12. "Governmental function" includes any activity that one or more public servants are legally authorized to undertake on behalf of government.
13. "Harm" means loss, disadvantage, or injury to the person affected, and includes loss, disadvantage, or injury to any other person in whose welfare the person affected is interested.
14. "Included offense" means an offense:
  - a. That is established by proof of the same or less than all the facts required to establish commission of the offense charged;
  - b. That consists of criminal facilitation of or an attempt or solicitation to commit the offense charged; or
  - c. That differed from the offense charged only in that it constitutes a less serious harm or risk of harm to the same person, property, or public interest, or because a lesser degree of culpability suffices to establish its commission.
15. "Includes" should be read as if the phrase "but is not limited to" were also set forth.
16. "Law enforcement officer" or "peace officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.
17. "Local" means of or pertaining to any political subdivision of the state.

18. "Manifest injustice" means a specific finding by the court that the imposition of sentence is unreasonably harsh or shocking to the conscience of a reasonable individual, with due consideration of the totality of circumstances.
19. "Offense" means conduct for which a term of imprisonment or a fine is authorized by statute after conviction.
20. "Official action" includes a decision, opinion, recommendation, vote, or other exercise of discretion by any government agency.
21. "Official proceeding" means a proceeding heard or which may be heard before any government agency or branch or public servant authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with any such proceeding.
22. "Omission" means a failure to act.
23. As used in this title and in sections outside this title which define offenses, "person" includes, where relevant, a corporation, limited liability company, partnership, unincorporated association, or other legal entity. When used to designate a party whose property may be the subject of action constituting an offense, the word "person" includes a government that may lawfully own property in this state.
24. "Political subdivision" as used in this title and in any statute outside this title which defines an offense means a county, city, school district, township, and any other local governmental entity created by law.
25. "Possesses" means an individual has:
  - a. Direct physical control of something on or around the individual's person;  
or
  - b. The power and intention to exercise control over something accessible to but not on or around the individual's person.
- ~~26-27.~~ "Risk assessment" means an initial phase with a secondary process approved by the department of health and human services for the evaluation of the likelihood a person that committed an offense will commit another similar offense. The initial phase is an assessment tool that is administered by a trained probation and parole officer. A predetermined score on the initial phase initiates the secondary process that includes a clinical interview, psychological testing, and verification through collateral information or psychophysiological testing, or both. The department of health and human services shall perform the secondary process of the risk assessment.
- ~~27-28.~~ "Serious bodily injury" means bodily injury that creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness,

extreme pain, permanent loss or impairment of the function of any bodily member or organ, a bone fracture, or impediment of air flow or blood flow to the brain or lungs.

28-29. "Signature" includes any name, mark, or sign written or affixed with intent to authenticate any instrument or writing.

29-30. "Substantial bodily injury" means a substantial temporary disfigurement, loss, or impairment of the function of any bodily member or organ.

30-31. "Thing of value" or "thing of pecuniary value" means a thing of value in the form of money, tangible or intangible property, commercial interests, or anything else the primary significance of which is economic gain to the recipient.

31-32. "Tier 1 mental health professional" has the same meaning as provided under section 25-01-01.

**SECTION 2. AMENDMENT.** Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-02.1. Mandatory prison terms for armed offenders.**

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when:
  - a. In the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, destructive device, or firearm; or
  - b. ~~The~~An offender ~~prohibited from possessing a firearm under section 62.1-02-01~~ possesses or has within immediate reach and control a dangerous weapon, explosive, destructive device, or firearm while in the course of committing any felony offense under subsection 1, 3, or 7 of section 19-03.1-23.
2. This requirement applies only when possession of a dangerous weapon, explosive, destructive device, or firearm has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:
  - a. If the offense for which the offender is convicted is a class AA, class A, or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
  - b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.
3. This section applies even when being armed is an element of the offense for which the offender is convicted.
4. This section applies even if the offender is prosecuted for a violation of section 62.1-02-01 for the same conduct.

5. An offender serving a sentence subject to this section may be eligible to participate in a release program under section 12-48.1-02 during the last six months of the offender's sentence.

**SECTION 3. AMENDMENT.** Section 62.1-01-01 of the North Dakota Century Code is amended and reenacted as follows:

**62.1-01-01. General definitions.**

As used in this title, unless the context otherwise requires:

1. "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, dagger, or knife with a blade of five inches [12.7 centimeters] or more; any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas, including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance. "Dangerous weapon" does not include a spray or aerosol containing CS, also known as ortho-chlorobenzamalonitrile; CN, also known as alpha-chloroacetophenone; or other irritating agent intended for use in the defense of an individual, nor does the term include a device that uses voltage for the defense of an individual, unless the device uses a projectile and voltage or the device uses a projectile and may be used to apply multiple applications of voltage during a single incident, then the term includes the device for an individual who is prohibited from possessing a firearm under this title.
2. "Direct supervision of an adult" means that an adult is present in such close proximity so as to be capable of observing and directing the actions of the individual supervised.
3. "Firearm" or "weapon" means any device that expels or is readily capable of expelling a projectile by the action of an explosive and includes any such device, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon.
4. "Gaming site" means any room or premises licensed by the attorney general or by a city or county governing body to conduct legal gaming operations.
5. "Government building" means a building which is owned, possessed, or used by or leased to the state of North Dakota, or any of its political subdivisions.
6. "Handgun" means any firearm that is not designed to be fired from the shoulder, which has a barrel less than sixteen inches [40.64 centimeters] long, and which is capable of firing, by the energy of an explosive in a fixed metallic cartridge, an exposed projectile through a rifled bore. The term includes all firearms that are designed to be readily modified between rifle and pistol forms, if in compliance with the National Firearms Act [26 U.S.C. 5801-5872].
7. "Law enforcement officer" means:

- a. A public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law; or
- b. A retired public servant in good standing who:
  - (1) Was authorized by law or by a government agency or branch for at least ten years to enforce the law and to conduct or engage in investigations or prosecutions for violations of law or who was separated from service due to a service-related physical disability;
  - (2) Maintains the same level of firearms proficiency as is required by the peace officers standards and training board for law enforcement officers, maintains the standards for qualifications in firearms training for active law enforcement officers as determined by the former agency of the individual in the state in which the individual resides, or maintains the standards used by a certified firearms instructor qualified to conduct a firearms qualification test for active duty officers in the state in which the individual resides;
  - (3) Has a photo identification card issued by a local law enforcement agency which identifies the individual as having been employed by a government agency or branch as a law enforcement officer and indicates the individual has passed the firearms proficiency test within twelve months from the date of issue; and
  - (4) Has not been found by a qualified medical professional to be unqualified for reasons relating to mental health or entered an agreement with a government agency or branch in which the public servant acknowledges a lack of qualifications for reasons relating to the mental health of the public servant.
8. "Machine gun, submachine gun, or fully automatic rifle" means a firearm, mechanism, or instrument not requiring that the trigger be pressed for each shot, and having a reservoir, belt, or other means of storing and carrying ammunition which can be loaded into the firearm, mechanism, or instrument and fired therefrom at a rate of five or more shots to the second. The term does not include a binary trigger that fires one round upon the pull of the trigger and one round upon release of the trigger.
9. "Mentally deficient individual" means any individual, minor or adult other than a mentally ill individual, who is so mentally defective as to be incapable of managing that individual's affairs and to require supervision, control, and care for that individual's own or the public welfare.
10. "Plain view" means the handgun is placed in such a location or carried in such a position as to be easily discernible by the ordinary observation of a passerby. In a motor vehicle, this includes being placed on the seat, dashboard, or in a gunrack as long as the handgun is not covered or is in any other way concealed from view.
11. "Possession" means an individual has:
  - a. Direct physical control of something on or around the individual's person;  
or

- b. The power and intention to exercise control over something accessible to but not on or around the individual's person.
12. "Rifle" means any firearm designed or redesigned, made or remade, and intended to be fired from the shoulder and using the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each pull of the trigger.
- 42-13. "Secured" means the firearm is closed into the trunk or nonpassenger part of the vehicle; placed into a closed and secure carrying device; rendered inoperative by the use of a trigger, hammer, cylinder, slide, or barrel-locking device that renders the firearm incapable of firing until the device is unlocked and removed; or so disassembled or disabled as to be rendered incapable of firing.
- 43-14. "Short-barreled rifle" means a rifle having one or more barrels less than sixteen inches [40.64 centimeters] in length and any firearm made from a rifle, whether by alteration, modification, or otherwise, if the firearm, as modified, has an overall length of less than twenty-six inches [66.04 centimeters].
- 44-15. "Short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches [45.72 centimeters] in length and any firearm made from a shotgun, whether by alteration, modification, or otherwise, if the firearm, as modified, has an overall length of less than twenty-six inches [66.04 centimeters].
- 45-16. "Shotgun" means a firearm designed or redesigned, made or remade, and intended to be fired with one hand below or behind and one hand in front of the breach, which uses the energy of the explosive in a fixed shotgun shell to fire through a smooth or a rifled bore either a number of ball shot or a single projectile for each single pull of the trigger.
- 46-17. "Silencer" means any device for or attached to any firearm which will silence or deaden the sound or natural report of the firearm when it is discharged.
- 47-18. "Unloaded" means the chamber of the firearm does not contain a loaded shell. If the firearm is a revolver, then none of the chambers in the cylinder may contain a loaded shell.

**SECTION 4. AMENDMENT.** Subsection 1 of section 62.1-02-01 of the North Dakota Century Code is amended and reenacted as follows:

1. a. A person who has been convicted anywhere of a felony offense involving violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an equivalent felony offense of another state or the federal government is prohibited from owning a firearm or having one in possession ~~or under control~~ from the date of conviction and continuing for a ~~period of~~ ten years after the date of conviction or the date of release from incarceration, parole, or probation, whichever is latest.
- b. A person who has been convicted anywhere of a felony offense of this or another state or the federal government not provided for in subdivision a or who has been convicted of a class A misdemeanor offense involving violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another state or the federal government and the offense was committed while using or possessing a firearm, a dangerous

weapon, or, as defined in section 12.1-01-04, a destructive device or an explosive, is prohibited from owning a firearm or having one in possession ~~or under control~~ from the date of conviction and continuing for a ~~period of~~ five years after the date of conviction or the date of release from incarceration, parole, or probation, whichever is latest.

- c. A person who is or has ever been diagnosed and confined or committed to a hospital or other institution in this state or elsewhere by a court of competent jurisdiction, other than a person who has had the petition that provided the basis for the diagnosis, confinement, or commitment dismissed under section 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another jurisdiction, as a person requiring treatment as defined in section 25-03.1-02, or as a mentally deficient individual, is prohibited from purchasing a firearm or having one in possession ~~or under control~~. This limitation does not apply to a person who has not suffered from the disability for the previous three years or who has successfully petitioned for relief under section 62.1-02-01.2.
- d. A person under the age of eighteen years may not possess a handgun except that such a person, while under the direct supervision of an adult, may possess a handgun for the purposes of firearm safety training, target shooting, or hunting.

A person who violates subdivision a or b is guilty of a class C felony, and a person who violates subdivision c or d is guilty of a class A misdemeanor.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 124

### SENATE BILL NO. 2046

(Judiciary Committee)  
(At the request of the Supreme Court)

AN ACT to amend and reenact section 12.1-04-08 of the North Dakota Century Code, relating to fitness to proceed.

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

**SECTION 1. AMENDMENT.** Section 12.1-04-08 of the North Dakota Century Code is amended and reenacted as follows:

##### **12.1-04-08. Suspension or dismissal of proceedings - Referral for services.**

1. If the court determines based upon a preponderance of the evidence that the defendant currently lacks fitness to proceed and the defendant is charged with a class B misdemeanor, except a class B misdemeanor under chapter 12.1-17, the proceedings must be dismissed.
2. If the court determines based upon a preponderance of the evidence that the defendant currently lacks fitness to proceed, the defendant is charged with a felony or a class A misdemeanor, and the report as required under section 12.1-04-07 indicates a likelihood the defendant will attain fitness within a specified period of time from the date of the finding upon completion of a course of therapeutically appropriate treatment, the proceedings against the defendant must be suspended. ~~For a defendant charged with a felony, the proceedings must be suspended~~ for a period of up to one hundred eighty days. The court may extend the suspension for an additional three hundred sixty-five days if there is medical evidence to believe the defendant's fitness to proceed will be restored during the extended period. For a defendant charged with a class B misdemeanor under chapter 12.1-17, the proceedings must be suspended for a period no longer than the maximum term of imprisonment for the most serious offense charged. When the court determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding must be resumed. If prosecution of the defendant has not resumed or it is determined by the court, after a hearing if a hearing is requested, that the defendant will not regain fitness to proceed within the allotted time, the charges against the defendant must be dismissed.
- 2-3. If the court determines based upon a preponderance of the evidence that the defendant currently lacks fitness to proceed and that the defendant will not attain fitness to proceed, the proceedings must be dismissed. The court may at any time make a referral for other appropriate services. Other appropriate services include:
  - a. Determination of incapacity, by a district court with appropriate jurisdiction following petition by the state's attorney, for the appointment of a guardian or conservator pursuant to chapter 30.1-28 or 30.1-29; or
  - b. Civil commitment of the person pursuant to chapter 25-03.1; or

c. Any other services the court deems appropriate.

- ~~3-4.~~ If the court determines the defendant currently lacks fitness to proceed and the defendant may attain fitness to proceed under subsection 1, the court may enter an order for a course of treatment considering the least restrictive form of treatment therapeutically appropriate.
- a. Unless excused by the court, in a proceeding to determine therapy in an attempt to attain fitness, the defendant shall be represented by trial counsel.
  - b. If the court finds the individual is not able to retain the services of a tier 1a mental health professional and that those services are not otherwise available, the court shall authorize reasonable expenditures from public funds to examine the individual.
  - c. In a motion hearing to resume prosecution, the state or prosecuting authority must show by a preponderance of the evidence the defendant has attained fitness to proceed.
- ~~4-5.~~ If the court orders the defendant committed to a treatment facility in an attempt to attain fitness to proceed under subsection 1, the court shall provide the special custody and commitment terms in the order. The special terms of commitment must include an order for the defendant to accept all nonexperimental, generally accepted medical, psychiatric, or psychological treatment recommended by the treatment facility, including the use of involuntary treatment with prescribed medication without the need for a separate commitment under chapter 25-03.1.
- a. If the order does not indicate the terms of commitment, the director or superintendent of the treatment facility may determine the nature of the constraints necessary within the treatment facility to carry out the order of the court.
  - b. If the court orders an individual committed for therapeutic treatment to attain fitness to proceed, the court shall set a date consistent with the timeline established in this section for a review of the defendant's fitness to proceed. At least sixty days before the date specified for review, the director or director's designee or the superintendent of the treatment facility shall inquire as to whether the individual is represented by counsel and file a written report of the facts ascertained with the court.
- ~~5-6.~~ If the parties to the action have reason to modify the special terms of the commitment order under this section, the parties shall make a motion to the court and the court shall determine by a preponderance of the evidence if the modification of the special terms is necessary and the least restrictive therapeutic alternative therapy in an attempt to attain fitness to proceed.
- ~~6-7.~~ The custodian, guardian, or other person charged with the control of the defendant may take an appeal from the court's order in the manner provided by law.

Approved April 12, 2023

Filed April 13, 2023

## CHAPTER 125

### HOUSE BILL NO. 1171

(Representatives Steiner, K. Anderson, Headland, Karls, Kasper, Lefor, Rohr, D.  
Ruby, Schatz, VanWinkle)  
(Senators Myrdal, Rummel)

AN ACT to create and enact a new section to chapter 12.1-17 of the North Dakota Century Code, relating to prohibiting a forced or coerced abortion; and to provide a penalty.

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

**SECTION 1.** A new section to chapter 12.1-17 of the North Dakota Century Code is created and enacted as follows:

##### **Forced or coerced abortion - Penalty.**

1. As used in this section:

a. "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable intrauterine pregnancy of a woman, including the elimination of one or more unborn children in a multifetal pregnancy, with knowledge the termination will with reasonable likelihood cause the death of the unborn child. The use, prescription, or means is not an abortion if done with the intent to:

(1) Save the life or preserve the health of the unborn child;

(2) Remove a dead unborn child caused by spontaneous abortion; or

(3) Treat a woman for an ectopic pregnancy.

b. "Force or coerce" means committing, attempting to commit, or threatening to commit physical harm to a woman, the unborn child, or another individual intended to compel the woman to have an abortion performed against her will.

c. "Threat" means at least one statement, or a course of conduct by the individual, which places a woman in reasonable apprehension that the individual will follow through with the statement or act as implied by the individual's course of conduct. The term does not include constitutionally protected speech or any generalized statement regarding a lawful pregnancy option.

2. It is a class C felony to force or coerce a woman to have an abortion against her will.

3. Upon the request of the victim, a law enforcement agency investigating a violation of this section shall notify the victim not less than twenty-four hours

before initially contacting the individual alleged to have committed a violation of this section.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 126

### HOUSE BILL NO. 1269

(Representatives Ista, Cory, Hanson, Heinert, Klemin, M. Ruby, Schneider)  
(Senators Braunberger, Larson, Lee, Sickler)

AN ACT to amend and reenact section 12.1-17-13 of the North Dakota Century Code, relating to a mandated intervention program for domestic violence offenders; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 12.1-17-13 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-17-13. Mandated ~~treatment~~ intervention program for domestic violence offenders.**

1. As used in this section, "intimate partner" means an offender's spouse, former spouse, current dating partner, recent former dating partner, or another individual with whom the offender has a child in common regardless of whether the offender and the individual are or have been married to each other, are or have been in a dating relationship with each other, or resided together at any time.
2. The sentence for an offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-02, 12.1-17-03, 12.1-17-04, ~~or 12.1-17-05, 12.1-17-07, 12.1-17-07.1, 12.1-18-02, 12.1-18-03, 12.1-21-05, 12.1-21-06.1, 12.1-31.2-01, 12.1-31.2-02, or 14-07.1-06~~ against an actor's family or household member, as defined in subsection 4 of section 14-07.1-04 intimate partner, must include an order to complete a domestic violence offender ~~evaluation~~ assessment and ~~treatment~~ intervention program as determined by the court. A court may not order the offender to attend anger management classes or individual counseling unless a domestic violence offender ~~treatment~~ intervention program is not reasonably available to the defendant and the court makes findings for the record explaining why an order to complete a domestic violence offender ~~treatment~~ intervention program would be inappropriate.
3. If an offender who is ordered to complete a domestic violence offender assessment and intervention program is assessed and determined to be ~~inappropriate for the program by the program provider, a court may find the order to complete a domestic violence offender assessment and intervention program to be satisfied or may order the offender to complete other appropriate programming.~~

Approved April 18, 2023

Filed April 19, 2023

## CHAPTER 127

### HOUSE BILL NO. 1334

(Representatives Christensen, Cory, Henderson, Klemin, S. Olson, Vetter)  
(Senators Luick, Myrdal, Paulson)

AN ACT to create and enact section 12.1-17-04.1 of the North Dakota Century Code, relating to domestic terrorism; to provide a penalty; and to declare an emergency.

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

**SECTION 1.** Section 12.1-17-04.1 of the North Dakota Century Code is created and enacted as follows:

##### **12.1-17-04.1. Domestic terrorism - Definitions - Penalty.**

##### 1. As used in this section:

a. "Domestic terrorism" means an activity conducted within the geographical boundaries of the state which:

(1) Is done in cooperation with any federally designated terrorist organization that threatens or appears to threaten the sovereignty of the state or the United States of America;

(2) Is a violation of criminal law; and

(3) Either:

(a) Involves violent acts or threats specifically intended to physically harm human life and:

[1] Intimidate, coerce, influence, or disrupt other lawful activity within the state; or

[2] Influence the policy of the state or any political subdivision of the state; or

(b) Involves the use of weapons of mass destruction.

b. "Material support or resources" means currency or other financial securities, financial services, lodging, safe houses, training, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets. The term does not include medical or religious material.

##### 2. A person is guilty of a class C felony if the person willfully:

a. Assembles with one or more persons for the purpose of training or instructing in the use of, or practicing with, any technique or means capable of causing property damage, or bodily injury or death, with the

- intent to employ such training, instruction, or practice in the commission of domestic terrorism;
- b. Commits an act of domestic terrorism;
  - c. Conspires with one or more persons to commit an act of domestic terrorism; or
  - d. Provides material support or resources, or conceals or disguises the nature, location, source, or ownership of material support or resources, with the knowledge and intention that the support or resources are to be used in domestic terrorism.

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

Approved April 12, 2023

Filed April 13, 2023

## CHAPTER 128

### HOUSE BILL NO. 1140

(Representatives Satrom, S. Olson, Schauer, Strinden)  
(Senators Clemens, Conley, Lee)

AN ACT to create and enact a new section to chapter 12.1-20 of the North Dakota Century Code, relating to sexual reproductive imposition; and to provide a penalty.

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

**SECTION 1.** A new section to chapter 12.1-20 of the North Dakota Century Code is created and enacted as follows:

##### **Sexual reproductive imposition.**

1. As used in this section:
  - a. "Donor" means an individual who donates reproductive material, regardless of whether for personal use or compensation.
  - b. "Egg" means the unfertilized female reproductive cell.
  - c. "Health care provider" means an individual licensed or certified by the state to deliver health care. The term includes an individual licensed to practice medicine or osteopathy under chapter 43-17.
  - d. "Pre-embryo" means the product of fertilization of an egg by a sperm until the appearance of the embryonic axis.
  - e. "Recipient" means an individual who receives reproductive material from a donor.
  - f. "Reproductive material" includes any human egg, pre-embryo, or sperm.
  - g. "Sperm" means the male reproductive cell.
2. A health care provider may not intentionally penetrate the vagina of a recipient with the reproductive material of a donor or any object containing the reproductive material of a donor knowing the recipient has not consented to the use of the reproductive material from that donor.
3. A violation of this section is a class C felony.
4. Notwithstanding section 29-04-02, the applicable period of limitation for prosecution of a violation under this section does not begin to run until the date on which the violation is discovered and reported to law enforcement authorities.

Approved April 4, 2023

Filed April 5, 2023

## CHAPTER 129

### HOUSE BILL NO. 1378

(Representatives Schauer, Beltz, Christy, Grueneich, Heinert, Strinden, Wagner)  
(Senators Dever, Lee, Sorvaag, Wanzek)

AN ACT to create and enact a new subdivision to subsection 3 of section 12.1-23-05 of the North Dakota Century Code, relating to grading of theft offenses; to amend and reenact section 12.1-21-05 of the North Dakota Century Code, relating to criminal mischief; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 12.1-21-05 of the North Dakota Century Code is amended and reenacted as follows:

##### **12.1-21-05. Criminal mischief.**

1. A person is guilty of an offense if that person:
  - a. Willfully tampers with tangible property of another so as to endanger person or property; or
  - b. Willfully damages tangible property of another.
2. The offense is:
  - a. A class B felony if the actor intentionally causes pecuniary loss in excess of ten thousand dollars.
  - b. A class C felony if the actor intentionally causes pecuniary loss in excess of two thousand dollars but not in excess of ten thousand dollars or damages tangible property of another by means of an explosive or a destructive device.
  - c. A class C felony if the actor commits the offense while engaged in a riot, as defined in section 12.1-25-01.
  - d. A class A misdemeanor if the actor recklessly causes pecuniary loss in excess of two thousand dollars or if the actor intentionally causes pecuniary loss of from one hundred dollars through two thousand dollars.

Otherwise the offense is a class B misdemeanor.

**SECTION 2.** A new subdivision to subsection 3 of section 12.1-23-05 of the North Dakota Century Code is created and enacted as follows:

The property is stolen while engaging in a riot as defined in section 12.1-25-01 or while with an organized group of five or more individuals.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 130

### HOUSE BILL NO. 1333

(Representatives Prichard, Frellich, Klemin, Koppelman, Marschall, Motschenbacher,  
D. Ruby, Tveit, VanWinkle)  
(Senator Estenson)

AN ACT to create and enact a new section to chapter 12.1-27.1 of the North Dakota Century Code, relating to restrictions on adult-oriented performances; to amend and reenact section 12.1-27.1-12 of the North Dakota Century Code, relating to state pre-emption of local laws regulating obscenity; and to provide a penalty.

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

**SECTION 1.** A new section to chapter 12.1-27.1 of the North Dakota Century Code is created and enacted as follows:

##### **Restrictions on adult-oriented performances - Penalty.**

1. As used in this section:

a. "Adult-oriented performance" means a performance that, regardless of whether or not performed for consideration, is intended to appeal to a prurient interest and features:

(1) The purposeful exposure, whether complete or partial, of:

(a) A human genital, the pubic region, the human buttocks, or a female breast, if the breast is exposed below a point immediately above the top of the areola; or

(b) Prosthetic genitalia, breasts, or buttocks; or

(2) Sexual conduct.

b. "Public property" means real property in which a state agency or a political subdivision has an ownership interest.

2. A person 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 organizes an adult-oriented performance:

a. On public property; or

b. At a business establishment frequented by minors, or where minors are or may be invited as a part of the general public.

**SECTION 2. AMENDMENT.** Section 12.1-27.1-12 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-27.1-12. State pre-emption of local laws regulating obscenity.**

This chapter ~~shall be~~ applicable and ~~uniform~~ throughout the state, and ~~no~~ political subdivision ~~shall~~may not enact new, or enforce existing, ordinances or resolutions regulating or prohibiting the dissemination of obscene materials, or controlling obscene or adult-oriented performances, except ordinances authorized by section 5-02-09, section 58-03-11, chapter 11-33, or chapter 40-47.

Approved April 21, 2023

Filed April 24, 2023

## CHAPTER 131

### HOUSE BILL NO. 1205

(Representatives Lefor, Steiner)

AN ACT to create and enact a new section to chapter 12.1-27.1 of the North Dakota Century Code, relating to prohibiting public libraries from maintaining explicit sexual material; to provide for a legislative management report; and to provide for application.

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

**SECTION 1.** A new section to chapter 12.1-27.1 of the North Dakota Century Code is created and enacted as follows:

#### **Public libraries prohibited from maintaining explicit sexual material - Report.**

1. As used in this section:
  - a. "Explicit sexual material" means any material which:
    - (1) Taken as a whole, appeals to the prurient interest of minors;
    - (2) Is patently offensive to prevailing standards in the adult community in North Dakota as a whole with respect to what is suitable material for minors; and
    - (3) Taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.
  - b. "Public library" means a library established under chapter 40-38.
2. A public library may not maintain in its children's collection inventory books that contain explicit sexual material.
3. By January 1, 2024, each public library shall develop a policy and process for reviewing library collections to ensure conformance with the requirements of this section. The policy must include a procedure:
  - a. For the removal or relocation of explicit sexual material in the public library;
  - b. For the development of a book collection that is appropriate for the age and maturity levels of the individuals who may access the materials, and which is suitable for, and consistent with, the purpose of the library;
  - c. For the public library to receive, evaluate, and respond to a request from an individual regarding the removal or relocation of one or more of the books or other materials in the library collection containing explicit sexual material; and

- d. To periodically review the library collection to ensure the library collection does not contain explicit sexual material in the children's collection.
4. Each public library shall provide a compliance report to the legislative management before May 1, 2024, on the implementation of collection development and relocation of materials policies as required by this section and to ensure sufficient compliance with this section.

**SECTION 2. APPLICATION.** This Act applies to any children's book inventory maintained by a public library after March 31, 2024.

Approved April 25, 2023

Filed April 26, 2023

## CHAPTER 132

### HOUSE BILL NO. 1138

(Representatives Satrom, Karls, Klemin, Schauer, Vigesaa)  
(Senator Conley)

AN ACT to amend and reenact subsection 1 of section 12.1-32-02 and sections 19-03.1-23 and 39-08-01.5 of the North Dakota Century Code, relating to a mental health court program.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

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 or faith-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.

- i. Drug court program. A drug court is a district court supervised treatment program approved by the supreme court which combines judicial supervision with alcohol and drug testing and substance use disorder treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for drug court programs.
- j. Veterans treatment docket. A veterans treatment docket is a district court supervised docket approved by the supreme court which combines judicial supervision with licensed treatment programs to treat substance use disorders, mental health conditions, behavioral health conditions, traumatic brain injuries, military sexual trauma, and co-occurring disorders. The supreme court may adopt rules, including rules of procedure, for veterans treatment dockets.
- k. Completion of a restorative justice program. For purposes of this section, "restorative justice program" means a system of justice which focuses on the rehabilitation of offenders through reconciliation with victims and the community at large.
- l. Mental health court program. A mental health court is a district court supervised treatment program approved by the supreme court which combines judicial supervision with mental health services and treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for mental health court programs.

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. If the person is sentenced to a term of imprisonment, the court may prohibit the person from contacting the victim during the term of imprisonment. For purposes of this subsection, "victim" means victim as defined in section 12.1-34-01.

**SECTION 2. AMENDMENT.** Section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.1-23. Prohibited acts - Penalties.**

1. Except as authorized by this chapter, it is unlawful for a 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 a person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. A 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 B felony.
  - b. Any other controlled substance classified in schedule I, II, or III, or a controlled substance analog, except marijuana or tetrahydrocannabinol is guilty of a class B felony.

- c. Marijuana, tetrahydrocannabinol, or a substance classified in schedule IV, is guilty of a class C felony.
  - d. A substance classified in schedule V, is guilty of a class A misdemeanor.
2. A prior misdemeanor conviction under subsection 7 or a prior conviction under subsection 3 or 4 of section 19-03.4-03 may not be considered a prior offense under subsection 1.
3. 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, II, or III, is guilty of a class B felony.
  - b. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
  - c. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
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. 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. Except for a prior conviction equivalent to a misdemeanor violation of subsection 7 or a prior conviction under subsection 3 or 4 of section 19-03.4-03, a violation of this title or a law of another state or the federal government which is equivalent to an offense with respect to the manufacture, delivery, or intent to deliver a controlled substance under this title committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsection 1. 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. a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog 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.
- b. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class A misdemeanor for the first offense under this subsection and a class C felony for a second or subsequent offense under this subsection.
- c. If, at the time of the offense the person is in or on 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, unless the offense involves marijuana or tetrahydrocannabinol.
- d. A person who violates this subsection by possessing:
  - (1) Marijuana:
    - (a) In an amount of less than one-half ounce [14.175 grams] is guilty of an infraction.
    - (b) At least one-half ounce [14.175 grams] but not more than 500 grams of marijuana is guilty of a class B misdemeanor.
    - (c) More than 500 grams of marijuana is guilty of a class A misdemeanor.
  - (2) Tetrahydrocannabinol:
    - (a) In an amount less than two grams is guilty of an infraction.
    - (b) At least two grams but not more than six grams of tetrahydrocannabinol is guilty of a class B misdemeanor.
    - (c) More than six grams of tetrahydrocannabinol is guilty of a class A misdemeanor.
- e. If an individual is sentenced to the legal and physical custody of the department of corrections and rehabilitation under this subsection, the department may place the individual in a drug and alcohol treatment program designated by the department. Upon the successful completion of the drug and alcohol treatment program, the department shall release the individual from imprisonment to begin any court-ordered period of probation.
- f. If the individual is not subject to any court-ordered probation, the court shall order the individual to serve the remainder of the sentence of imprisonment on supervised probation subject to the terms and conditions imposed by the court.

- g. Probation under this subsection may include placement in another facility, treatment program, drug court, mental health court, or veterans treatment docket. If an individual is placed in another facility or treatment program upon release from imprisonment, the remainder of the sentence must be considered as time spent in custody.
  - h. An individual incarcerated under this subsection as a result of a second probation revocation is not eligible for release from imprisonment upon the successful completion of treatment.
  - i. A person who violates this subsection regarding possession of five or fewer capsules, pills, or tablets of a schedule II, III, IV, or V controlled substance or controlled substance analog is guilty of a class A misdemeanor.
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.
  9. If a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana or two grams or less of tetrahydrocannabinol 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. Once sealed, the court record may not be opened even by order of the court.
  10. Upon successful completion of a drug court program, mental health court program, or veterans treatment docket, a person who has been convicted of a felony under this section and sentenced to drug court, mental health court, or veterans treatment docket is deemed to have been convicted of a misdemeanor.
  11. If a person convicted of a misdemeanor under this section is sentenced to drug court, mental health court, or veterans treatment docket and successfully completes a drug court program, mental health court, or veterans treatment docket, the court shall dismiss the case and seal the file in accordance with section 12.1-32-07.2.
  12. If an individual under the age of twenty-one pleads guilty or is found guilty of a first offense regarding possession of one-half ounce [14.175 grams] or less of marijuana, the court also may sentence the individual to an evidence-based alcohol and drug education program operated under rules adopted by the department of human services under section 50-06-44. For a second or subsequent offense regarding possession of one-half ounce [14.175 grams] or less of marijuana, the court also shall sentence the individual to an evidence-based alcohol and drug education program operated under rules adopted by the department of health and human services under section 50-06-44.

<sup>82</sup> **SECTION 3. AMENDMENT.** Section 39-08-01.5 of the North Dakota Century Code is amended and reenacted as follows:

**39-08-01.5. Partial suspension of sentence for drug court program, mental health court program, or veterans treatment docket completion.**

1. Notwithstanding section 39-08-01, all but ten days of the minimum mandatory sentence required for a defendant charged with a third or subsequent violation of section 39-08-01 may be suspended on the condition the defendant successfully completes a drug court program, mental health court program, or veterans treatment docket approved by the supreme court.
2. Upon successful completion of a drug court program, mental health court program, or veterans treatment docket, a defendant convicted of a felony under section 39-08-01 and sentenced to drug court, mental health court, or veterans treatment docket is deemed to have been convicted of a misdemeanor.
3. If a defendant convicted of a misdemeanor under section 39-08-01 is sentenced to drug court, mental health court, or veterans treatment docket and successfully completes a drug court program, mental health court, or veterans treatment docket, the court shall dismiss the case and seal the file in accordance with section 12.1-32-07.2.

Approved April 11, 2023

Filed April 12, 2023

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<sup>82</sup> Section 39-08-01.5 was also amended by section 1 of House Bill No. 1277, chapter 354.

## CHAPTER 133

### HOUSE BILL NO. 1490

(Representatives Ista, Hagert, Heinert, Louser, O'Brien, Schauer, Schreiber-Beck)  
(Senator Dwyer)

AN ACT to amend and reenact section 12.1-32-07.4 of the North Dakota Century Code, relating to presumptive probation; to provide a penalty; and to provide for application.

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

**SECTION 1. AMENDMENT.** Section 12.1-32-07.4 of the North Dakota Century Code is amended and reenacted as follows:

##### **12.1-32-07.4. Presumptive probation.**

1. The sentencing court shall sentence an individual who has pled guilty to, or has been found guilty of, a class C felony offense or class A misdemeanor offense to a term of probation at the time of initial sentencing, except for an offense involving domestic violence; an offense subject to registration under section 12.1-32-15; an offense involving a firearm or dangerous weapon, explosive, or incendiary device; or if a mandatory term of incarceration is required by law.
2. The sentencing court may impose a sentence of imprisonment if the sentencing court finds there are aggravating factors present to justify a departure from presumptive probation. Aggravating factors include:
  - a. That the individual has plead guilty to, or has been found guilty of, a felony offense or class A misdemeanor offense prior to the date of the commission of the offense or offenses charged in the complaint, information, or indictment;
  - b. The age and vulnerability of the victim, whether the individual was in a position of responsibility or trust over the victim, or whether the individual abused a public position of responsibility or trust; or
  - c. If the individual used force, threats, or coercion in the commission of the offense.
3. This section does not preclude the sentencing court from deferring imposition of sentence in accordance with subsection 4 of section 12.1-32-02 or sentencing an individual to a term of incarceration with credit for time spent in custody if execution of the sentence is suspended.

**SECTION 2. APPLICATION.** This Act applies to criminal charges filed after the effective date of this Act.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 134

### HOUSE BILL NO. 1041

(Judiciary Committee)  
(At the request of the Supreme Court)

AN ACT to amend and reenact section 12.1-32-08 of the North Dakota Century Code, relating to restitution.

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

**SECTION 1. AMENDMENT.** Section 12.1-32-08 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-08. Hearing prior to ordering restitution, reparation, or reimbursement of indigent defense costs and expenses - Conditions - Collection of restitution for insufficient funds checks - Continuing appropriation.**

1. ~~Before imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount of restitution. The court, when sentencing a person adjudged guilty of criminal activities that have resulted in pecuniary damages, in addition to any other sentence the court may impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court. Restitution must include payment to the owner of real property that is contaminated by the defendant in the manufacturing of methamphetamine for the cost of removing the contamination and returning the property to the property's condition before contamination and to any other person that has incurred costs in decontaminating the property. In determining the amount of restitution, the court shall take into account the reasonable damages sustained by the victim or victims of the criminal offense, which damages are limited to those directly related to the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the prescribed treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and 12.1-27.2. The court shall fix the amount of restitution or reparation and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. The court shall order restitution be paid to the division of adult services for any benefits the division has paid or may pay under chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments made pursuant to the order must be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may, unless the court directs otherwise, be filed without filing fee, transcribed, and enforced by the person entitled to the restitution or reparation or by the division of adult services in the same manner as civil judgments rendered by the courts of this state may be enforced. Upon thirty days' written notice to the victim's last known address, the court may~~

~~order the judgment imposing a duty to pay restitution or reparation be docketed in the same manner as a civil judgment under section 29-26-22.1.~~

2. If the court has retained jurisdiction after the sentencing hearing for claims of restitution, to make a claim for restitution, the victim shall submit information by affidavit or declaration and, as applicable, documentary evidence within the time specified in the order. The information submitted must describe the items or elements of loss, itemize the total dollar amounts of restitution claimed, and present facts and evidence sufficient to support a finding the restitution is directly related to the offense and the amount awarded. The prosecutor shall serve the defendant with a copy of the information submitted by the victim no later than sixty days following sentencing.
3. The defendant may challenge restitution but must do so by requesting a hearing within thirty days of being served with the written notification of the amount of restitution requested. The hearing request must be made in writing and filed with the court. If no hearing is requested, the court may enter a judgment ordering restitution. A defendant may not challenge restitution after the thirty-day time period has passed.
4. In determining the amount of restitution, the court shall take into account the reasonable damages sustained by the victim or victims of the criminal offense, which damages are limited to those directly related to the criminal offense and expenses actually sustained as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the prescribed treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and 12.1-27.2. The court shall fix the amount of restitution or reparation and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. The court may order the defendant to disclose income and assets on forms developed by the state court administrator to facilitate the setting of an appropriate payment plan. The court shall order restitution be paid to the division of adult services for any benefits the division has paid or may pay to the victim under chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments made pursuant to the order must be deducted from damages awarded in a civil action arising from the same incident.
5. An order that a defendant make restitution or reparation as a sentence or condition of probation, unless the court directs otherwise, may be filed without filing fee, transcribed, and enforced by the person entitled to the restitution or reparation or by the division of adult services in the same manner as civil judgments rendered by the courts of this state may be enforced. Upon thirty days' written notice to the victim's last known address, the court may order the judgment imposing a duty to pay restitution or reparation be docketed in the same manner as a civil judgment under section 29-26-22.1.
6. When the restitution ordered by the court under subsection 1 is the result of a finding that the defendant issued a check or draft without sufficient funds or without an account, the court shall impose as costs the greater of the sum of ten dollars or an amount equal to twenty-five percent of the amount of restitution ordered. The costs imposed under this subsection, however, may not exceed one thousand dollars. The state-employed clerks of district court

shall remit the funds collected as costs under this subsection to the state treasurer for deposit in the restitution collection assistance fund. The funds deposited into the restitution collection assistance fund are appropriated to the judicial branch on a continuing basis for the purpose of defraying expenses incident to the collection of restitution, including operating expenses and the compensation of additional necessary personnel. The state's attorneys and county-employed clerks of district court shall remit the funds collected as costs under this subsection to the county treasurer to be deposited in the county general fund.

- ~~3-7.~~ The court may order the defendant to perform reasonable assigned work as a condition of probation, which assigned work need not be related to the offense charged, but must not be solely for the benefit of a private individual other than the victim.
- ~~4-a-8.~~ Under section 12.1-32-07, the court may order that the defendant reimburse indigent defense costs and expenses as a condition of probation.
- ~~a.~~ 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 right to a hearing on the reimbursement amount. 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.
- ~~b.~~ 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 actual amount of attorney's fees and expenses must be 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-c.~~ 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.
- ~~e-d.~~ 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.
- ~~5-9.~~ If the court finds that the defendant is unable to pay a fine, supervision fee, reimbursement for indigent defense costs and expenses, or restitution or reparations, the court may order the defendant to perform reasonable

assigned work in lieu of all or part of a fine, a supervision fee, reimbursement for indigent defense costs and expenses, or restitution or reparations. The defendant may not perform reasonable assigned work in lieu of restitution or reparations unless the person entitled to restitution or reparations has consented in writing or on the record.

Approved March 22, 2023

Filed March 23, 2023

## CHAPTER 135

### SENATE BILL NO. 2067

(Senator Larson)

AN ACT to amend and reenact section 12.1-34-07 of the North Dakota Century Code, relating to medical screening and acute forensic medical examination costs.

#### 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. 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 the medical screening and acute forensic medical examination. ~~Beginning on April first of the final year of each biennium, the~~ The attorney general, subject to legislative appropriations, shall reimburse each accredited children's advocacy center located in the state for a forensic interview that is not reimbursable by ~~insurance~~, Medicaid, or crime victims compensation.
4. Evidence obtained during 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.

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 136

### HOUSE BILL NO. 1254

(Representatives Tveit, D. Anderson, Bellew, Prichard, Rohr, VanWinkle)  
(Senators Boehm, Clemens, Estenson, Luick, Myrdal, Vedaa)

AN ACT to create and enact chapter 12.1-36.1 of the North Dakota Century Code, relating to the prohibition of certain practices against a minor; to provide a penalty; and to declare an emergency.

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

<sup>83</sup> **SECTION 1.** Chapter 12.1-36.1 of the North Dakota Century Code is created and enacted as follows:

##### **12.1-36.1-01. Definitions.**

As used in this chapter:

1. "Health care provider" means a licensed physician, physician assistant, nurse, or a certified medical assistant.
2. "Minor" means an individual under the age of eighteen. The term includes an emancipated individual.
3. "Sex" means the biological state of being female or male, based on the individual's nonambiguous sex organs, chromosomes, and endogenous hormone profiles at birth.

##### **12.1-36.1-02. Perception of a minor's sex - Prohibited practices - Penalty.**

1. Except as provided under section 12.1-36.1-03, if a minor's perception of the minor's sex is inconsistent with the minor's sex, a health care provider may not engage in any of the following practices for the purpose of changing or affirming the minor's perception of the minor's sex:
  - a. Perform castration, vasectomy, hysterectomy, oophorectomy, metoidioplasty, orchiectomy, penectomy, phalloplasty, or vaginoplasty;
  - b. Perform a mastectomy;
  - c. Prescribe, dispense, administer, or otherwise supply any drug that has the purpose of aligning the minor's sex with the minor's perception of the minor's sex when the perception is inconsistent with the minor's sex, including:
    - (1) Puberty-blocking medication to stop normal puberty;
    - (2) Supraphysiologic doses of testosterone to females; or

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<sup>83</sup> Section 12.1-36.1-01 was amended by section 2 of House Bill No. 1474, chapter 66.

(3) Supraphysiologic doses of estrogen to males; or

d. Remove any otherwise healthy or nondiseased body part or tissue, except for a male circumcision.

2. A health care provider who willfully violates:

a. Subdivision a, b, or d of subsection 1 is guilty of a class B felony.

b. Subdivision c of subsection 1 is guilty of a class A misdemeanor.

**12.1-36.1-03. Exceptions.**

Section 12.1-36.1-02 does not apply:

1. To the good-faith medical decision of a parent or guardian of a minor born with a medically verifiable genetic disorder of sex development, including:

a. A minor with external biological sex characteristics that are irresolvably ambiguous, including having forty-six, XX chromosomes with virilization, forty-six, XY chromosomes with undervirilization, or having both ovarian and testicular tissue; or

b. When a physician otherwise has diagnosed a disorder of sexual development in which the physician, through genetic testing, has determined the minor does not have the normal sex chromosome structure for a male or female; or

2. If performance or administration of the medical procedure on the minor began before the effective date of this Act.

**12.1-36.1-04. Statutory limitation.**

Notwithstanding the limitations of section 29-04-02, prosecution for a violation of section 12.1-36.1-02 must be commenced within three years of the date of the offense or within three years after the offense is reported to law enforcement, whichever is later.

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

Approved April 19, 2023

Filed April 21, 2023

# DEBTOR AND CREDITOR RELATIONSHIPS

## CHAPTER 137

### SENATE BILL NO. 2119

(Industry and Business Committee)  
(At the request of the Department of Financial Institutions)

AN ACT to create and enact chapter 13-09.1 of the North Dakota Century Code, relating to money transmitters; to amend and reenact subsection 1 of section 6-01-01.1 of the North Dakota Century Code, relating to money transmitters; to repeal chapter 13-09 of the North Dakota Century Code, relating to money transmitters; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 6-01-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. There is 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, 13-04.1, 13-05, 13-08, ~~13-09~~13-09.1, 13-10, and 13-11.

**SECTION 2.** Chapter 13-09.1 of the North Dakota Century Code is created and enacted as follows:

#### **13-09.1-01. Definitions.**

For purposes of this chapter, the following definitions shall apply:

1. "Acting in concert" means persons knowingly acting together with a common goal of jointly acquiring control of a licensee whether or not pursuant to an express agreement.
2. "Anti-Money Laundering Act of 2020" is the federal act which amended subchapter II of chapter 53 of title 31 United States Code, the legislative framework commonly referred to as the bank secrecy act or BSA. Anti-money laundering and countering the financing of terrorism has the same meaning as the previously used terminology.
3. "Authorized delegate" means a person a licensee designates to engage in money transmission on behalf of the licensee.
4. "Average daily money transmission liability" means the amount of the licensee's outstanding money transmission obligations in North Dakota at the end of each day in quarters ending March thirty-first, June thirtieth, September

thirtieth, and December thirty-first, added together and divided by the total number of days in each quarter.

5. "Closed loop stored value" means stored value that is redeemable by the issuer only for goods or services provided by the issuer or its affiliate or franchisees of the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value.
6. "Commissioner" means the commissioner of the department of financial institutions.
7. "Control" means:
  - a. (1) The power to vote, directly or indirectly, at least twenty-five percent of the outstanding voting shares or voting interests of a licensee or person in control of a licensee;
    - (2) The power to elect or appoint a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee; or
    - (3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.
  - b. Rebuttable presumption of control.
    - (1) A person is presumed to exercise a controlling influence when the person holds the power to vote, directly or indirectly, at least ten percent of the outstanding voting shares or voting interests of a licensee or person in control of a licensee.
    - (2) A person presumed to exercise a controlling influence as defined by subsection 6 can rebut the presumption of control if the person is a passive investor.
  - c. For purposes of determining the percentage of a person controlled by any other person, the person's interest must be aggregated with the interest of any other immediate family member, including the person's spouse, parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law, and any other person who shares the person's home.
8. "Eligible rating" means a credit rating of any of the three highest rating categories provided by an eligible rating service, whereby each category may include rating category modifiers, such as "plus" or "minus" for S&P Global, or the equivalent for any other eligible rating service. Long-term credit ratings are deemed eligible if the rating is equal to A- or higher by S&P Global, or the equivalent from any other eligible rating service. Short-term credit ratings are deemed eligible if the rating is equal to or higher than A-2 or SP-2 by S&P Global, or the equivalent from any other eligible rating service. In the event that ratings differ among eligible rating services, the highest rating applies when determining whether a security bears an eligible rating.

9. "Eligible rating service" means any nationally recognized statistical rating organization as defined by the United States securities and exchange commission, and any other organization designated by the commissioner by rule or order.
10. "Federally insured depository financial institution" means a bank, credit union, savings and loan association, trust company, savings association, savings bank, industrial bank, or industrial loan company organized under the laws of the United States or any state of the United States, when such bank, credit union, savings and loan association, trust company, savings association, savings bank, industrial bank, or industrial loan company has federally insured deposits.
11. "In this state" means at a physical location within North Dakota for a transaction requested in person. For a transaction requested electronically or by phone, the provider of money transmission may determine if the person requesting the transaction is "in this state" by relying on other information provided by the person regarding the location of the individual's residential address or a business entity's principal place of business or other physical address location, and any records associated with the person that the provider of money transmission may have that indicate the location, including an address associated with an account.
12. "Individual" means a natural person.
13. "Key individual" means any individual ultimately responsible for establishing or directing policies and procedures of the licensee, such as an executive officer, manager, director, or trustee.
14. "Licensee" means a person licensed under this chapter.
15. "Material litigation" means litigation, that according to United States generally accepted accounting principles is significant to a person's financial health and would be required to be disclosed in the person's annual audited financial statements, report to shareholders, or similar records.
16. "Monetary value" means a medium of exchange, whether or not redeemable in money.
17. "Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.
18. "Money service business accredited state" means a state agency that is accredited by the conference of state bank supervisors and money transmitter regulators association for money transmission licensing and supervision.
19. "Money transmission" means any of the following:
  - a. Selling or issuing payment instruments to a person located in this state.
  - b. Selling or issuing stored value to a person located in this state.
  - c. Receiving money for transmission from a person located in this state.

The term includes payroll processing services. The term does not include the provision solely of online or telecommunications services or network access.

20. "Multistate licensing process" means any agreement entered by and among state regulators relating to coordinated processing of applications for money transmission licenses, applications for the acquisition of control of a licensee, control determinations, or notice and information requirements for a change of key individuals.
21. "Nationwide system" means the nationwide multistate licensing system and registry developed by the conference of state bank supervisors and the American association of residential mortgage regulators and owned and operated by the state regulatory registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in financial services industries.
22. "Outstanding money transmission obligations" means:

- a. Any payment instrument or stored value issued or sold by the licensee to a person located in the United States or reported as sold by an authorized delegate of the licensee to a person that is located in the United States that has not yet been paid or refunded by or for the licensee, or escheated in accordance with applicable abandoned property laws; or
- b. Any money received for transmission by the licensee or an authorized delegate in the United States from a person located in the United States that has not been received by the payee or refunded to the sender, or escheated in accordance with applicable abandoned property laws.

For purposes of this subsection, "in the United States" includes, to the extent applicable, a person in any state, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or a United States military installation that is located in a foreign country.

23. "Passive investor" means a person that:
- a. Does not have the power to elect a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee;
- b. Is not employed by and does not have any managerial duties of the licensee or person in control of a licensee;
- c. Does not have the power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee; and
- d. Either:
- (1) Attests to subdivisions a, b, and c, in a form and in a medium prescribed by the commissioner; or
- (2) Commits to the passivity characteristics of subdivisions a, b, and c, in a written document.

24. "Payment instrument" means a written or electronic check, draft, money order, traveler's check, or other written or electronic instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include stored value or any instrument that:
- a. Is redeemable by the issuer only for goods or services provided by the issuer or its affiliate or franchisees of the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value; or
  - b. Not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program.
25. "Payroll processing services" means receiving money for transmission pursuant to a contract with a person to deliver wages or salaries, make payment of payroll taxes to state and federal agencies, make payments relating to employee benefit plans, or make distributions of other authorized deductions from wages or salaries. The term "payroll processing services" does not include an employer performing payroll processing services on its own behalf or on behalf of its affiliate, or a professional employment organization subject to regulation under applicable state law.
26. "Person" means any individual, general partnership, limited partnership, limited liability company, corporation, trust, association, joint stock corporation, or other corporate entity identified by the commissioner.
27. "Receiving money for transmission" or "money received for transmission" means receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.
28. "Stored value" means monetary value representing a claim against the issuer evidenced by an electronic or digital record, which is intended and accepted for use as a means of redemption for money or monetary value, or payment for goods or services. The term includes "prepaid access" as defined by title 31, Code of Federal Regulations, Section 1010.100. The term "stored value" does not include a payment instrument or closed loop stored value, or stored value not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program.
29. "Tangible net worth" means the aggregate assets of a licensee excluding all intangible assets, less liabilities, as determined in accordance with United States generally accepted accounting principles.

### **13-09.1-02. Exemptions.**

This chapter does not apply to:

1. An operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among persons exempted by this section or licensees, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearing house transfers, or similar funds transfers.
2. A person appointed as an agent of a payee to collect and process a payment from a payor to the payee for goods or services, other than money transmission itself, provided to the payor by the payee, provided that:

- a. There exists a written agreement between the payee and the agent directing the agent to collect and process payments from payors on the payee's behalf;
  - b. The payee holds the agent out to the public as accepting payments for goods or services on the payee's behalf; and
  - c. Payment for the goods and services is treated as received by the payee upon receipt by the agent so that the payor's obligation is extinguished and there is no risk of loss to the payor if the agent fails to remit the funds to the payee.
3. A person that acts as an intermediary by processing payments between an entity that has directly incurred an outstanding money transmission obligation to a sender, and the sender's designated recipient, provided that the entity:
    - a. Is properly licensed or exempt from licensing requirements under this chapter;
    - b. Provides a receipt, electronic record, or other written confirmation to the sender identifying the entity as the provider of money transmission in the transaction; and
    - c. Bears sole responsibility to satisfy the outstanding money transmission obligation to the sender, including the obligation to make the sender whole in connection with any failure to transmit the funds to the sender's designated recipient.
  4. The United States or a department, agency, instrumentality, or its agent.
  5. Money transmission by the United States postal service or by an agent of the United States postal service.
  6. A state, county, city, or any other governmental agency or governmental subdivision, or instrumentality of a state, or its agent.
  7. A federally insured depository financial institution, bank holding company, office of an international banking corporation, foreign bank that establishes a federal branch pursuant to the International Bank Act of 1978 [12 U.S.C. Section 3102], corporation organized pursuant to the Bank Service Company Act [12 U.S.C. Sections 1861-1867], or corporation organized under the Edge Act [12 U.S.C. Sections 611-633].
  8. Electronic funds transfer of governmental benefits for a federal, state, county, or governmental agency by a contractor on behalf of the United States or a department, agency, instrumentality, or on behalf of a state or governmental subdivision, agency, or instrumentality.
  9. A board of trade designated as a contract market under the Commodity Exchange Act [7 U.S.C. Sections 1-25], or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for a board.
  10. A registered futures commission merchant under the federal commodities laws to the extent of its operation as a merchant.

11. A person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as a broker-dealer.
12. An individual employed by a licensee, authorized delegate, or any person exempted from the licensing requirements of this chapter when acting within the scope of employment and under the supervision of the licensee, authorized delegate, or exempted person as an employee and not as an independent contractor.
13. A person expressly appointed as a third-party service provider to, or agent of an entity exempt under subsection 7, solely to the extent that:
  - a. The service provider or agent is engaging in money transmission on behalf of and pursuant to a written agreement with the exempt entity that sets forth the specific functions that the service provider or agent is to perform; and
  - b. The exempt entity assumes all risk of loss and all legal responsibility for satisfying the outstanding money transmission obligations owed to purchasers and holders of the outstanding money transmission obligations upon receipt of the purchaser's or holder's money or monetary value by the service provider or agent.
14. A person exempt by regulation or order if the commissioner finds the exemption to be in the public interest and that the regulation of the person is not necessary for the purposes of this chapter.

#### **13-09.1-03. Authority to require demonstration of exemption.**

The commissioner may require any person claiming to be exempt from licensing pursuant to section 13-09.1-02 to provide information and documentation to the commissioner demonstrating the person qualifies for any claimed exemption.

#### **13-09.1-04. Implementation.**

1. In order to carry out the purposes of this chapter, the commissioner may, subject to the provisions of subsections 1 and 2 of section 13-09.1-05:
  - a. Enter into agreements or relationships with other government officials or federal and state regulatory agencies and regulatory associations in order to improve efficiencies and reduce regulatory burden by standardizing methods or procedures, and sharing resources, records, or related information obtained under this chapter;
  - b. Use, hire, contract, or employ analytical systems, methods, or software to examine or investigate any person subject to this chapter;
  - c. Accept, from other state or federal government agencies or officials, licensing, examination, or investigation reports made by other state or federal government agencies or officials; and
  - d. Accept audit reports made by an independent certified public accountant or other qualified third-party auditor for an applicant or licensee and incorporate the audit report in any report of examination or investigation.

2. The commissioner has the broad administrative authority to administer, interpret, and enforce this chapter; promulgate rules or regulations implementing this chapter; and to recover the cost of administering and enforcing this chapter by imposing and collecting proportionate and equitable fees and costs associated with applications, examinations, investigations, and other actions required to achieve the purpose of this chapter.

#### **13-09.1-05. Confidentiality.**

1. Except as otherwise provided in subsection 2, all information or reports obtained by the commissioner from an applicant, licensee, or authorized delegate, and all information contained in or related to an examination, investigation, operating report, or condition report prepared by, on behalf of, or for the use of the commissioner, or financial statements, balance sheets, or authorized delegate information, are confidential and are not subject to disclosure under section 6-01-07.1.
2. The commissioner may disclose information not otherwise subject to disclosure under subsection 1 to representatives of state or federal agencies who promise in a record that they will maintain the confidentiality of the information or where the commissioner finds that the release is reasonably necessary for the protection and interest of the public in accordance with section 6-01-07.1.
3. This section does not prohibit the commissioner from disclosing to the public a list of all licensees or the aggregated financial or transactional data concerning those licensees.
4. Information contained in the records of the department of financial institutions that is not confidential and may be made available to the public either on the department of financial institutions' website, upon receipt by the department of financial institutions of a written request, or in the nationwide system must include:
  - a. The name, business address, telephone number, and unique identifier of a licensee;
  - b. The business address of a licensee's registered agent for service;
  - c. The name, business address, and telephone number of all authorized delegates;
  - d. The terms of or a copy of any bond filed by a licensee, provided that confidential information, including prices and fees for bond is redacted; and
  - e. Copies of any nonconfidential final orders of the department of financial institutions relating to any violation of this chapter or regulations implementing this chapter.
5. Imposition of an administrative fine or penalty under this chapter.

#### **13-09.1-06. Supervision.**

1. The commissioner may conduct an examination or investigation of a licensee or authorized delegate or otherwise take independent action authorized by this

chapter or by a rule adopted or order issued under this chapter as reasonably necessary or appropriate to administer and enforce this chapter, regulations implementing this chapter, and other applicable law, including the federal Anti-Money Laundering Act of 2020. The commissioner may:

- a. Conduct an examination either onsite or offsite as the commissioner may reasonably require;
  - b. Conduct an examination in conjunction with an examination conducted by representatives of other state agencies or agencies of another state or of the federal government;
  - c. Accept the examination report of another state agency or an agency of another state or of the federal government, or a report prepared by an independent accounting firm, which on being accepted is considered for all purposes as an official report of the commissioner; and
  - d. Summon and examine under oath a key individual or employee of a licensee or authorized delegate and require the person to produce records regarding any matter related to the condition and business of the licensee or authorized delegate.
2. A licensee or authorized delegate shall provide, and the commissioner shall have full and complete access to, all records the commissioner may reasonably require to conduct a complete examination. The records must be provided at the location and in the format specified by the commissioner, provided, the commissioner may utilize multistate record production standards and examination procedures when the standards will reasonably achieve the requirements of this subsection.
3. Unless otherwise directed by the commissioner, a licensee shall pay all costs reasonably incurred in connection with an examination of the licensee or the licensee's authorized delegates.

### **13-09.1-07. Networked supervision.**

1. To efficiently and effectively administer and enforce this chapter and to minimize regulatory burden, the commissioner may participate in multistate supervisory processes established between states and coordinated through the conference of state bank supervisors, money transmitter regulators association, and affiliates and successors for all licensees that hold licenses in this state and other states. As a participant in multistate supervision, the commissioner will:
  - a. Cooperate, coordinate, and share information with other state and federal regulators in accordance with section 13-09.1-05;
  - b. Enter into written cooperation, coordination, or information-sharing contracts or agreements with organizations the membership of which is made up of state or federal governmental agencies; and
  - c. Cooperate, coordinate, and share information with organizations the membership of which is made up of state or federal governmental agencies, provided that the organizations agree in writing to maintain the confidentiality and security of the shared information in accordance with section 13-09.1-05.

2. The commissioner may not waive, and nothing in this section constitutes a waiver of, the commissioner's authority to conduct an examination or investigation or otherwise take independent action authorized by this chapter or a rule adopted or order issued under this chapter to enforce compliance with applicable state or federal law.
3. A joint examination or investigation, or acceptance of an examination or investigation report, does not waive an examination assessment provided for in this chapter.

#### **13-09.1-08. Relationship to federal law.**

1. In the event state money transmission jurisdiction is conditioned on a federal law, any inconsistencies between a provision of this chapter and the federal law governing money transmission must be governed by the applicable federal law to the extent of the inconsistency.
2. In the event of any inconsistencies between this chapter and a federal law that governs pursuant to subsection 1, the commissioner may provide interpretive guidance that identifies:
  - a. The inconsistency; and
  - b. The appropriate means of compliance with federal law.

#### **13-09.1-09. License required.**

1. A person may not engage in the business of money transmission or advertise, solicit, or hold itself out as providing money transmission unless the person is licensed under this chapter;
2. Subsection 1 does not apply to:
  - a. A person that is an authorized delegate of a person licensed under this chapter acting within the scope of authority conferred by a written contract with the licensee; or
  - b. A person that is exempt pursuant to section 13-09.1-02 and does not engage in money transmission outside the scope of the exemption.
3. A license issued under section 13-09.1-13 is not transferable or assignable.

#### **13-09.1-10. Consistent state licensing.**

1. To establish consistent licensing between North Dakota and other states, the commissioner may:
  - a. Implement all licensing provisions of this chapter in a manner that is consistent with other states that have adopted this chapter or multistate licensing processes; and
  - b. Participate in nationwide protocols for licensing cooperation and coordination among state regulators provided that the protocols are consistent with this chapter.

2. In order to fulfill the purposes of this chapter, the commissioner may establish relationships or contracts with the nationwide system or other entities designated by the nationwide system to enable the commissioner to:
  - a. Collect and maintain records;
  - b. Coordinate multistate licensing processes and supervision processes;
  - c. Process fees; and
  - d. Facilitate communication between North Dakota and licensees or other persons subject to this chapter.
3. The commissioner may utilize the nationwide system for all aspects of licensing in accordance with this chapter, including license applications, applications for acquisitions of control, surety bonds, reporting, criminal history background checks, credit checks, fee processing, and examinations. The commissioner may utilize the nationwide system forms, processes, and functionalities in accordance with this chapter. In the event the nationwide system does not provide functionality, forms, or processes for a provision of this chapter, the commissioner may strive to implement the requirements in a manner that facilitates uniformity with respect to licensing, supervision, reporting, and regulation of licensees which are licensed in multiple jurisdictions.
4. For the purpose of participating in the nationwide system, the commissioner may waive or modify, in whole or in part, by rule, regulation, or order, any or all of the requirements and to establish new requirements as reasonably necessary to participate in the nationwide system.

### **13-09.1-11. Application for license.**

1. Applicants for a license shall apply in a form and in a medium as prescribed by the commissioner. Each form must contain content as set forth by rule, regulation, instruction, or procedure of the commissioner and may be changed or updated by the commissioner in accordance with applicable law in order to carry out the purposes of this chapter and maintain consistency with the nationwide system licensing standards and practices. The application must state or contain, as applicable:
  - a. The legal name and residential and business addresses of the applicant and any fictitious or trade name used by the applicant in conducting its business;
  - b. A list of any criminal convictions of the applicant and any material litigation in which the applicant has been involved in the ten-year period next preceding the submission of the application;
  - c. A description of any money transmission previously provided by the applicant and the money transmission that the applicant seeks to provide in this state;
  - d. A list of the applicant's proposed authorized delegates and the locations in this state where the applicant and its authorized delegates propose to engage in money transmission;

- e. A list of other states in which the applicant is licensed to engage in money transmission and any license revocations, suspensions, or other disciplinary action taken against the applicant in another state;
  - f. Information concerning any bankruptcy or receivership proceedings affecting the licensee or a person in control of a licensee;
  - g. A sample form of contract for authorized delegates, if applicable;
  - h. A sample form of payment instrument or stored value, as applicable;
  - i. The name and address of any federally insured depository financial institution through which the applicant plans to conduct money transmission; and
  - j. Any other information the commissioner or the nationwide system reasonably requires with respect to the applicant.
2. If an applicant is a corporation, limited liability company, partnership, or other legal entity, the applicant shall also provide:
- a. The date of the applicant's incorporation or formation and state or country of incorporation or formation;
  - b. If applicable, a certificate of good standing from the state or country in which the applicant is incorporated or formed;
  - c. A brief description of the structure or organization of the applicant, including any parents or subsidiaries of the applicant, and whether any parents or subsidiaries are publicly traded;
  - d. The legal name, any fictitious or trade name, all business and residential addresses, and the employment, as applicable, in the ten-year period next preceding the submission of the application of each key individual and person in control of the applicant;
  - e. A list of any criminal convictions and material litigation in which a person in control of the applicant that is not an individual has been involved in the ten-year period preceding the submission of the application;
  - f. A copy of audited financial statements of the applicant for the most recent fiscal year and for the two-year period next preceding the submission of the application or, if determined to be acceptable to the commissioner, certified unaudited financial statements for the most recent fiscal year or other period acceptable to the commissioner;
  - g. A certified copy of unaudited financial statements of the applicant for the most recent fiscal quarter;
  - h. If the applicant is a publicly traded corporation, a copy of the most recent report filed with the United States securities and exchange commission under section 13 of the federal Securities Exchange Act of 1934 [15 U.S.C. Section 78m];
  - i. If the applicant is a wholly owned subsidiary of:

- (1) A corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under section 13 of the federal Securities Exchange Act of 1934 [15 U.S.C. Section 78m]; or
- (2) A corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States;
- j. The name and address of the applicant's registered agent in this state; and
- k. Any other information the commissioner reasonably requires with respect to the applicant.
3. A nonrefundable application fee of four hundred fifty dollars and a license fee of four hundred dollars must accompany an application for a license under this section. The license fee must be refunded if the application is denied.
4. The commissioner may waive one or more requirements of subsections 1 and 2 or permit an applicant to submit other information in lieu of the required information.

### **13-09.1-12. Information requirements for certain individuals.**

1. Any individual in control of a licensee or applicant, any individual that seeks to acquire control of a licensee, and each key individual shall furnish to the commissioner through the nationwide system the following items:
  - a. The individual's fingerprints for submission to the federal bureau of investigation and the commissioner for purposes of a national criminal history background check unless the person currently resides outside of the United States and has resided outside of the United States for the last ten years.
  - b. Personal history and experience in a form and in a medium prescribed by the commissioner, to obtain the following:
    - (1) An independent credit report from a consumer reporting agency unless the individual does not have a social security number, in which case, this requirement shall be waived;
    - (2) Information related to any criminal convictions or pending charges; and
    - (3) Information related to any regulatory or administrative action and any civil litigation involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of fiduciary duty, or breach of contract.
2. If the individual has resided outside of the United States at any time in the last ten years, the individual also shall provide an investigative background report prepared by an independent search firm that meets the following requirements:
  - a. At a minimum, the search firm shall:

- (1) Demonstrate that it has sufficient knowledge, resources, and employs accepted and reasonable methodologies to conduct the research of the background report; and
  - (2) Not be affiliated with or have an interest with the individual it is researching.
- b. At a minimum, the investigative background report must be written in the English language and must contain the following:
- (1) If available in the individual's current jurisdiction of residency, a comprehensive credit report, or any equivalent information obtained or generated by the independent search firm to accomplish the report, including a search of the court data in the countries, provinces, states, cities, towns, and contiguous areas where the individual resided and worked;
  - (2) Criminal records information for the past ten years, including felonies, misdemeanors, or similar convictions for violations of law in the countries, provinces, states, cities, towns, and contiguous areas where the individual resided and worked;
  - (3) Employment history;
  - (4) Media history, including an electronic search of national and local publications, wire services, and business applications; and
  - (5) Financial services-related regulatory history, including money transmission, securities, banking, insurance, and mortgage-related industries.

### **13-09.1-13. Issuance of license.**

1. When an application for an original license under this chapter appears to include all the items, addresses, all of the matters that are required, the application is complete and the commissioner shall promptly notify the applicant in a record of the date on which the application is determined to be complete. The commissioner shall approve or deny the application within one hundred twenty days after the completion date. The commissioner may for good cause extend the application period.
2. A determination by the commissioner that an application is complete and is accepted for processing means only that the application, on its face, appears to include all of the items, including the criminal background check response from the federal bureau of investigation, and address all of the matters that are required, and is not an assessment of the substance of the application or of the sufficiency of the information provided.
3. When an application is filed and considered complete under this section, the commissioner shall investigate the applicant's financial condition and responsibility, financial and business experience, character, and general fitness. The commissioner may conduct an onsite investigation of the applicant, the reasonable cost of which the applicant must pay. The commissioner shall issue a license to an applicant under this section if the commissioner finds that all of the following conditions have been fulfilled:

- a. The applicant has complied with sections 13-09.1-11 and 13-09.1-12; and
  - b. The financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant; and the competence, experience, character, and general fitness of the key individuals and persons in control of the applicant indicate that it is in the interest of the public to permit the applicant to engage in money transmission.
4. If an applicant avails itself or is otherwise subject to a multistate licensing process:
    - a. The commissioner may accept the investigation results of a lead investigative state for the purpose of subsection 3 if the lead investigative state has sufficient staffing, expertise, and minimum standards; or
    - b. If North Dakota is a lead investigative state, the commissioner may investigate the applicant pursuant to subsection 3 and the time frames established by agreement through the multistate licensing process, provided, however, that in no case shall the time frame be noncompliant with the application period in subdivision a of subsection 1.
  5. The commissioner shall issue a formal written notice of the denial of a license application within thirty days of the decision to deny the application. The commissioner shall set forth in the notice of denial the specific reasons for the denial of the application. An applicant whose application is denied by the commissioner under this subsection may appeal within thirty days after receipt of the written notice of the denial by requesting a hearing before the commissioner in accordance with chapter 28-32.
  6. The initial license term shall begin on the day the application is approved. The license shall expire on December thirty-first of the year in which the license term began, unless the initial license date is between November first and December thirty-first, in which instance the initial license term runs through December thirty-first of the following year.

#### **13-09.1-14. Renewal of license.**

1. A license under this chapter must be renewed annually.
  - a. An annual nonrefundable renewal fee must be paid by December thirty-first. The fee must equal five hundred dollars or one-fourth of one percent of the money transmission dollar volume in North Dakota for the twelve months ending June thirtieth, whichever is greater. For the transmission of virtual currency as defined in section 13-09.1-44, the fee must equal five hundred dollars or one-fourth of one percent of the average United States dollar equivalent market value of the virtual currency transmitted in North Dakota for the twelve months ending June thirtieth, whichever is greater. The fee may not exceed two thousand five hundred dollars.
  - b. The renewal term must be for a period of one year and begins on January first of each year after the initial license term and expires on December thirty-first of the year the renewal term begins.
2. A licensee shall submit a renewal report with the renewal fee, in a form and in a medium prescribed by the commissioner. The renewal report must state or

contain a description of each material change in information submitted by the licensee in its original license application which has not been reported to the commissioner.

3. The commissioner for good cause may grant an extension of the renewal date.
4. The commissioner may utilize the nationwide system to process license renewals provided that such functionality is consistent with this section.
5. A licensee may renew an expired license no later than January thirty-first subject to a late fee of fifty dollars.

#### **13-09.1-15. Maintenance of license.**

1. If a licensee does not continue to meet the qualifications or satisfy the requirements that apply to an applicant for a new money transmission license, the commissioner may suspend or revoke the licensee's license in accordance with the procedures established by this chapter or other applicable state law for such suspension or revocation.
2. An applicant for a money transmission license and a money transmission licensee must at all times meet the requirements in sections 13-09.1-32, 13-09.1-33, and 13-09.1-34.

#### **13-09.1-16. Acquisition of control.**

1. Any person, or group of persons acting in concert, seeking to acquire control of a licensee shall obtain the written approval of the commissioner prior to acquiring control. An individual is not deemed to acquire control of a licensee and is not subject to the acquisition of control provisions when that individual becomes a key individual in the ordinary course of business.
2. A person, or group of persons acting in concert, seeking to acquire control of a licensee shall, in cooperation with the licensee:
  - a. Submit an application in a form and in a medium prescribed by the commissioner; and
  - b. Submit a nonrefundable fee of four hundred fifty dollars with the request for approval.
3. Upon request, the commissioner may permit a licensee or the person, or group of persons acting in concert, to submit some or all information required by the commissioner pursuant to subdivision a of subsection 2 without using the nationwide system.
4. The application required by subdivision a of subsection 2 must include information required by section 13-09.1-12 for any new key individuals that have not previously completed the requirements of section 13-09.1-12 for a licensee.
5. When an application for acquisition of control under this section appears to include all the items and address all of the matters that are required, the application must be considered complete and the commissioner shall promptly notify the applicant in a record of the date on which the application was

- determined to be complete. The commissioner shall approve or deny the application within sixty days after the completion date; or the commissioner may for good cause extend the application period.
6. A determination by the commissioner that an application is complete and is accepted for processing means only that the application, on its face, appears to include all of the items and address all of the matters that are required, and is not an assessment of the substance of the application or of the sufficiency of the information provided.
  7. When an application is filed and considered complete under subsection 5, the commissioner shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the person, or group of persons acting in concert, seeking to acquire control. The commissioner shall approve an acquisition of control pursuant to this section if the commissioner finds that all of the following conditions have been fulfilled:
    - a. The requirements of subsections 2 and 4 have been met, as applicable; and
    - b. The financial condition and responsibility, financial and business experience, competence, character, and general fitness of the person, or group of persons acting in concert, seeking to acquire control; and the competence, experience, character, and general fitness of the key individuals and persons that would be in control of the licensee after the acquisition of control indicate that it is in the interest of the public to permit the person, or group of persons acting in concert, to control the licensee.
  8. If an applicant avails itself or is otherwise subject to a multistate licensing process:
    - a. The commissioner may accept the investigation results of a lead investigative state for the purpose of subsection 7 if the lead investigative state has sufficient staffing, expertise, and minimum standards; or
    - b. If North Dakota is a lead investigative state, the commissioner may investigate the applicant pursuant to subsection 7 and the time frames established by agreement through the multistate licensing process.
  9. The commissioner shall issue a formal written notice of the denial of an application to acquire control within thirty days of the decision to deny the application. The commissioner shall set forth in the notice of denial the specific reasons for the denial of the application. An applicant whose application is denied by the commissioner under this subsection may appeal within thirty days after receipt of the written notice of the denial by requesting a hearing before the commissioner in accordance with chapter 28-32.
  10. The requirements of subsections 1 and 2 do not apply to any of the following:
    - a. A person that acts as a proxy for the sole purpose of voting at a designated meeting of the shareholders or holders of voting shares or voting interests of a licensee or a person in control of a licensee;
    - b. A person that acquires control of a licensee by devise or descent;

- c. A person that acquires control of a licensee as a personal representative, custodian, guardian, conservator, or trustee, or as an officer appointed by a court of competent jurisdiction or by operation of law;
  - d. A person that is exempt under subsection 7 of section 13-09.1-02;
  - e. A person that the commissioner determines is not subject to subsection 1 based on the public interest;
  - f. A public offering of securities of a licensee or a person in control of a licensee; or
  - g. An internal reorganization of a person in control of the licensee where the ultimate person in control of the licensee remains the same.
11. Persons in subdivisions b, c, d, f, and g of subsection 10 in cooperation with the licensee shall notify the commissioner within fifteen days after the acquisition of control.
12. The requirements of subsections 1 and 2 do not apply to a person that has complied with and received approval to engage in money transmission under this chapter or was identified as a person in control in a prior application filed with and approved by the commissioner or by a money service business accredited state pursuant to a multistate licensing process, provided that:
- a. The person has not had a license revoked or suspended or controlled a licensee that has had a license revoked or suspended while the person was in control of the licensee in the previous five years;
  - b. If the person is a licensee, the person is well managed and has received at least a satisfactory rating for compliance at its most recent examination by a money service business accredited state if such rating was given;
  - c. The licensee to be acquired is projected to meet the requirements of sections 13-09.1-32, 13-09.1-33, and 13-09.1-34 after the acquisition of control is completed, and if the person acquiring control is a licensee, that licensee is also projected to meet the requirements of sections 13-09.1-32, 13-09.1-33, and 13-09.1-34 after the acquisition of control is completed;
  - d. The licensee to be acquired will not implement any material changes to its business plan as a result of the acquisition of control, and if the person acquiring control is a licensee, that licensee also will not implement any material changes to its business plan as a result of the acquisition of control; and
  - e. The person provides notice of the acquisition in cooperation with the licensee and attests to subdivisions a through d in a form and in a medium prescribed by the commissioner.
- If the notice is not disapproved within thirty days after the date on which the notice was determined to be complete, the notice is deemed approved.
13. Before filing an application for approval to acquire control of a licensee a person may request in writing a determination from the commissioner as to whether the person would be considered a person in control of a licensee

upon consummation of a proposed transaction. If the commissioner determines that the person would not be a person in control of a licensee, the proposed person and transaction is not subject to the requirements of subsections 1 and 2.

14. If a multistate licensing process includes a determination pursuant to subsection 13 and an applicant avails itself or is otherwise subject to the multistate licensing process:
  - a. The commissioner may accept the control determination of a lead investigative state with sufficient staffing, expertise, and minimum standards for the purpose of subsection 13; or
  - b. If North Dakota is a lead investigative state, the commissioner may investigate the applicant pursuant to subsection 13 and the time frames established by agreement through the multistate licensing process.

**13-09.1-17. Notice and information requirements for a change of key individuals.**

1. A licensee adding or replacing any key individual shall:
  - a. Provide notice in a manner prescribed by the commissioner within fifteen days after the effective date of the key individual's appointment; and
  - b. Provide information as required by section 13-09.1-12 within forty-five days of the effective date.
2. Within ninety days of the date on which the notice provided pursuant to subsection 1 was determined to be complete, the commissioner may issue a notice of disapproval of a key individual if the competence, experience, character, or integrity of the individual would not be in the best interests of the public or the customers of the licensee to permit the individual to be a key individual of the licensee.
3. A notice of disapproval must contain a statement of the basis for disapproval and must be sent to the licensee and the disapproved individual. A licensee may appeal a notice of disapproval by requesting a hearing before the commissioner within thirty days after receipt of notice of disapproval in accordance with chapter 28-32.
4. If the notice provided pursuant to subsection 1 is not disapproved within ninety days after the date on which the notice was determined to be complete, the key individual is deemed approved.
5. If a multistate licensing process includes a key individual notice review and disapproval process pursuant to this section and the licensee avails itself or is otherwise subject to the multistate licensing process:
  - a. The commissioner may accept the determination of another state if the investigating state has sufficient staffing, expertise, and minimum standards for the purpose of this section; or
  - b. If North Dakota is a lead investigative state, the commissioner may investigate the applicant pursuant to subsection 2 and the time frames established by agreement through the multistate licensing process.

**13-09.1-18. Report of condition.**

1. Each licensee shall submit a report of condition within forty-five days of the end of the calendar quarter, or within any extended time as the commissioner may prescribe.
2. The report of condition must include:
  - a. Financial information at the licensee level;
  - b. Nationwide and state-specific money transmission transaction information in every jurisdiction in the United States where the licensee is licensed to engage in money transmission;
  - c. Permissible investments report;
  - d. Transaction destination country reporting for money received for transmission, if applicable; and
  - e. Any other information the commissioner reasonably requires with respect to the licensee. The commissioner may utilize the nationwide system for the submission of the report required by subsection 1 and may update as necessary the requirements of this section to carry out the purposes of this chapter and maintain consistency with the nationwide system reporting.
3. The information required by subdivision d of subsection 2 may only be included in a report of condition submitted within forty-five days of the end of the fourth calendar quarter.

**13-09.1-19. Audited financials.**

1. Each licensee shall, within ninety days after the end of each fiscal year, or within any extended time as the commissioner may prescribe, file with the commissioner:
  - a. An audited financial statement of the licensee for the fiscal year prepared in accordance with United States generally accepted accounting principles; and
  - b. Any other information as the commissioner may reasonably require.
2. The audited financial statements must be prepared by an independent certified public accountant or independent public accountant who is satisfactory to the commissioner.
3. The audited financial statements must include or be accompanied by a certificate of opinion of the independent certified public accountant or independent public accountant that is satisfactory in form and content to the commissioner. If the certificate or opinion is qualified, the commissioner may order the licensee to take any action as the commissioner may find necessary to enable the independent or certified public accountant or independent public accountant to remove the qualification.

**13-09.1-20. Authorized delegate reporting.**

1. Each licensee shall submit a report of authorized delegates within forty-five days of the end of the calendar quarter. The commissioner may utilize the nationwide system for the submission of the report required by this subsection provided that such functionality is consistent with the requirements of this section.
2. The authorized delegate report must include, at a minimum, each authorized delegate's:
  - a. Company legal name;
  - b. Taxpayer employer identification number;
  - c. Principal provider identifier;
  - d. Physical address;
  - e. Mailing address;
  - f. Any business conducted in other states;
  - g. Any fictitious or trade name;
  - h. Contact person name, phone number, and electronic mail;
  - i. Start date as licensee's authorized delegate;
  - j. End date acting as licensee's authorized delegate, if applicable;
  - k. Court orders pursuant to section 13-09.1-26; and
  - l. Any other information the commissioner reasonably requires with respect to the authorized delegate.

### **13-09.1-21. Reports of certain events.**

1. A licensee shall file a report with the commissioner within one business day after the licensee has reason to know of the occurrence of any of the following events:
  - a. The filing of a petition by or against the licensee under the federal bankruptcy code [11 U.S.C. Section 101-110], for bankruptcy or reorganization;
  - b. The filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors; or
  - c. The commencement of a proceeding to revoke or suspend its license in a state or country in which the licensee engages in business or is licensed.
2. A licensee shall file a report with the commissioner within three business days after the licensee has reason to know of the occurrence of any of the following events:

- a. A charge or conviction of the licensee or of a key individual or person in control of the licensee for a felony; or
- b. A charge or conviction of an authorized delegate for a felony.

**13-09.1-22. Anti-money laundering - Countering the financing of terrorism reports.**

A licensee and an authorized delegate shall file all reports required by federal currency reporting, recordkeeping, and suspicious activity reporting requirements as set forth in the federal Anti-Money Laundering Act of 2020 and other federal and state laws pertaining to money laundering. The timely filing of a complete and accurate report required under this section with the appropriate federal agency is deemed compliant with the requirements of this section.

**13-09.1-23. Records.**

1. A licensee shall maintain the following records, for determining its compliance with this chapter for at least six years:
  - a. A record of each outstanding money transmission obligation sold;
  - b. A general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts;
  - c. Bank statements and bank reconciliation records;
  - d. Records of outstanding money transmission obligations;
  - e. Records of each outstanding money transmission obligation paid within the six-year period;
  - f. A list of the last-known names and addresses of all of the licensee's authorized delegates; and
  - g. Any other records the commissioner reasonably requires by rule.
2. The items specified in subsection 1 may be maintained in any form of record.
3. Records specified in subsection 1 may be maintained outside this state if they are made accessible to the commissioner on seven business days' notice that is sent in a record.
4. All records maintained by the licensee as required in subsections 1 through 3 are open to inspection by the commissioner pursuant to subsection 1 of section 13-09.1-06.

**13-09.1-24. Relationship between licensee and authorized delegate.**

1. In this section, "remit" means to make direct payments of money to a licensee or its representative authorized to receive money or to deposit money in a bank in an account specified by the licensee.
2. Before a licensee may conduct business through an authorized delegate or allows a person to act as the licensee's authorized delegate, the licensee must:

- a. Adopt, and update as necessary, written policies and procedures reasonably designed to ensure that the licensee's authorized delegates comply with applicable state and federal law;
  - b. Enter into a written contract that complies with subsection 4; and
  - c. Conduct a reasonable risk-based background investigation sufficient for the licensee to determine whether the authorized delegate has complied and will likely comply with applicable state and federal law.
3. An authorized delegate must operate in full compliance with this chapter.
4. The written contract required by subsection 2 must be signed by the licensee and the authorized delegate and, at a minimum, must:
- a. Appoint the person signing the contract as the licensee's authorized delegate with the authority to conduct money transmission on behalf of the licensee;
  - b. Set forth the nature and scope of the relationship between the licensee and the authorized delegate and the respective rights and responsibilities of the parties;
  - c. Require the authorized delegate to agree to fully comply with all applicable state and federal laws, rules, and regulations pertaining to money transmission, including this chapter and regulations implementing this chapter, and relevant provisions of the federal Anti-Money Laundering Act of 2020;
  - d. Require the authorized delegate to remit and handle money and monetary value in accordance with the terms of the contract between the licensee and the authorized delegate;
  - e. Impose a trust on money and monetary value net of fees received for money transmission for the benefit of the licensee;
  - f. Require the authorized delegate to prepare and maintain records as required by this chapter or regulations implementing this chapter, or as reasonably requested by the commissioner;
  - g. Acknowledge that the authorized delegate consents to examination or investigation by the commissioner;
  - h. State the licensee is subject to regulation by the commissioner and that, as part of that regulation, the commissioner may suspend or revoke an authorized delegate designation or require the licensee to terminate an authorized delegate designation; and
  - i. Acknowledge receipt of the written policies and procedures required under subdivision a of subsection 2.
5. If the licensee's license is suspended, revoked, surrendered, or expired, the licensee must, within five business days, provide documentation to the commissioner that the licensee has notified all applicable authorized delegates of the licensee whose names are in a record filed with the

commissioner of the suspension, revocation, surrender, or expiration of a license. Upon suspension, revocation, surrender, or expiration of a license, applicable authorized delegates shall immediately cease to provide money transmission as an authorized delegate of the licensee.

6. An authorized delegate of a licensee holds in trust for the benefit of the licensee all money net of fees received from money transmission. If any authorized delegate commingles any funds received from money transmission with any other funds or property owned or controlled by the authorized delegate, all commingled funds and other property must be considered held in trust in favor of the licensee in an amount equal to the amount of money net of fees received from money transmission.
7. An authorized delegate may not use a subdelegate to conduct money transmission on behalf of a licensee.

#### **13-09.1-25. Unauthorized activities.**

A person shall not engage in the business of money transmission on behalf of a person not licensed under this chapter or not exempt pursuant to section 13-09.1-02. A person that engages in such activity provides money transmission to the same extent as if the person were a licensee, and must be jointly and severally liable with the unlicensed or nonexempt person.

#### **13-09.1-26. Prohibited authorized new delegates - Penalty.**

1. The district court of Burleigh County, in an action brought by a licensee, has jurisdiction to grant appropriate equitable or legal relief, including without limitation prohibiting the authorized delegate from directly or indirectly acting as an authorized delegate for any licensee in this state and the payment of restitution, damages, or other monetary relief, if the district court of Burleigh County finds that an authorized delegate failed to remit money in accordance with the written contract required by subsection 2 of section 13-09.1-24 or as otherwise directed by the licensee or required by law.
2. If the district court of Burleigh County issues an order prohibiting a person from acting as an authorized delegate for any licensee pursuant to subsection 1 of section 13-09.1-24, the licensee that brought the action shall report the order to the commissioner within thirty days and shall report the order through the nationwide system within ninety days.
3. An authorized delegate who holds money in trust for the benefit of a licensee and knowingly fails to remit such money is guilty of a class C felony.

#### **13-09.1-27. Timely transmission.**

1. Every licensee shall forward all money received for transmission in accordance with the terms of the agreement between the licensee and the sender unless the licensee has a reasonable belief or a reasonable basis to believe that the sender may be a victim of fraud or that a crime or violation of law, rule, or regulation has occurred, is occurring, or may occur.
2. If a licensee fails to forward money received for transmission in accordance with this section, the licensee must respond to inquiries by the sender with the reason for the failure unless providing a response would violate a state or federal law, rule, or regulation.

**13-09.1-28. Refunds.**

1. This section does not apply to:
  - a. Money received for transmission subject to the federal remittance rule [title 12, Code of Federal Regulation, part 1005, subpart B]; or
  - b. Money received for transmission pursuant to a written agreement between the licensee and payee to process payments for goods or services provided by the payee.
2. Every licensee shall refund to the sender within ten days of receipt of the sender's written request for a refund of any and all money received for transmission unless any of the following occurs:
  - a. The money has been forwarded within ten days of the date on which the money was received for transmission;
  - b. Instructions have been given committing an equivalent amount of money to the person designated by the sender within ten days of the date on which the money was received for transmission;
  - c. The agreement between the licensee and the sender instructs the licensee to forward the money at a time that is beyond ten days of the date on which the money was received for transmission. If funds have not yet been forwarded in accordance with the terms of the agreement between the licensee and the sender, the licensee shall issue a refund in accordance with the other provisions of this section;
  - d. The refund is requested for a transaction that the licensee has not completed based on a reasonable belief or a reasonable basis to believe that a crime or violation of law, rule, or regulation has occurred, is occurring, or may occur; or
  - e. The refund request does not enable the licensee to:
    - (1) Identify the sender's name and address or telephone number; or
    - (2) Identify the particular transaction to be refunded in the event the sender has multiple transactions outstanding.

**13-09.1-29. Receipts.**

1. This section does not apply to:
  - a. Money received for transmission subject to the federal remittance rule [title 12, Code of Federal Regulations, part 1005, subpart B];
  - b. Money received for transmission that is not primarily for personal, family, or household purposes;
  - c. Money received for transmission pursuant to a written agreement between the licensee and payee to process payments for goods or services provided by the payee; or
  - d. Payroll processing services.

2. For purposes of this section, "receipt" means a paper receipt, electronic record, or other written confirmation. For a transaction conducted in person, the receipt may be provided electronically if the sender requests or agrees to receive an electronic receipt. For a transaction conducted electronically or by phone, a receipt may be provided electronically. All electronic receipts must be provided in a retainable form.
3. Every licensee or its authorized delegate shall provide the sender a receipt for money received for transmission.
  - a. The receipt must contain the following information, as applicable:
    - (1) The name of the sender;
    - (2) The name of the designated recipient;
    - (3) The date of the transaction;
    - (4) The unique transaction or identification number;
    - (5) The name of the licensee, the nationwide system unique identification number, the licensee's business address, and the licensee's customer service telephone number;
    - (6) The amount of the transaction in United States dollars;
    - (7) Any fee charged by the licensee to the sender for the transaction; and
    - (8) Any taxes collected by the licensee from the sender for the transaction.
  - b. The receipt required by this section must be in English and in the language principally used by the licensee or authorized delegate to advertise, solicit, or negotiate, either orally or in writing, for a transaction conducted in person, electronically, or by phone, if other than English.

### **13-09.1-30. Notice.**

Every licensee or authorized delegate shall include on a receipt or disclose on the licensee's website or mobile application the name and phone number of the department of financial institutions and a statement that the licensee's customers can contact the department of financial institutions with questions or complaints about the licensee's money transmission services.

### **13-09.1-31. Disclosures for payroll processing services.**

1. A licensee that provides payroll processing services shall:
  - a. Issue reports to clients detailing client payroll obligations in advance of the payroll funds being deducted from an account; and
  - b. Make available worker paystubs or an equivalent statement to workers.
2. Subsection 1 does not apply to a licensee providing payroll processing services where the licensee's client designates the intended recipients to the licensee and is responsible for providing the disclosures required by subdivision b of subsection 1.

**13-09.1-32. Net worth.**

1. A licensee under this chapter shall maintain at all times a tangible net worth of the greater of one hundred thousand dollars or three percent of total assets for the first one hundred million dollars, two percent of additional assets for one hundred million dollars to one billion dollars, and one-half percent of additional assets for over one billion dollars.
2. Tangible net worth must be demonstrated at initial application by the applicant's most recent audited or unaudited financial statements pursuant to subdivision f of subsection 2 of section 13-09.1-11.
3. Notwithstanding the foregoing provisions of this section, the commissioner may, for good cause shown, exempt, in part or in whole, any applicant or licensee from the requirements of this section.

**13-09.1-33. Surety bond.**

1. An applicant for a money transmission license must provide, and a licensee at all times must maintain, security consisting of a surety bond in a form satisfactory to the commissioner or, with the commissioner's approval, a deposit instead of a bond in accordance with this section.
2. The amount of the required security must be:
  - a. The greater of one hundred thousand dollars or an amount equal to one hundred percent of the licensee's average daily money transmission liability in this state calculated for the most recently completed three-month period, up to a maximum of five hundred thousand dollars; or
  - b. In the event that the licensee's tangible net worth exceeds ten percent of total assets, the licensee shall maintain a surety bond of one hundred thousand dollars.
3. A licensee that maintains the maximum bond amount provided for in subdivision a of subsection 2 may not be required to calculate its average daily money transmission liability in this state for purposes of this section.
4. A licensee may exceed the maximum required bond amount pursuant to subdivision e of subsection 1 of section 13-09.1-35.

**13-09.1-34. Maintenance of permissible investments.**

1. A licensee shall maintain at all times permissible investments that have a market value computed in accordance with United States generally accepted accounting principles of not less than the aggregate amount of all of its outstanding money transmission obligations.
2. Except for permissible investments enumerated in subsection 1 of section 13-09.1-35, the commissioner, with respect to any licensee, may by rule or order limit the extent to which a specific investment maintained by a licensee within a class of permissible investments may be considered a permissible investment, if the specific investment represents undue risk to customers, not reflected in the market value of investments.

3. Permissible investments, even if commingled with other assets of the licensee, are held in trust for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations in the event of insolvency, the filing of a petition by or against the licensee under the federal bankruptcy code [11 U.S.C. Section 101-110] for bankruptcy or reorganization, the filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or in the event of an action by a creditor against the licensee who is not a beneficiary of this statutory trust. No permissible investments impressed with a trust pursuant to this subsection may be subject to attachment, levy of execution, or sequestration by order of any court, except for a beneficiary of this statutory trust.
4. Upon the establishment of a statutory trust in accordance with subsection 3 or when any funds are drawn on a letter of credit pursuant to subdivision d of subsection 1 of section 13-09.1-35, the commissioner shall notify the applicable regulator of each state in which the licensee is licensed to engage in money transmission, if any, of the establishment of the trust or the funds drawn on the letter of credit, as applicable. Notice must be deemed satisfied if performed pursuant to a multistate agreement or through the nationwide system. Funds drawn on a letter of credit, and any other permissible investments held in trust for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations, are deemed held in trust for the benefit of the purchasers and holders on a pro rata and equitable basis in accordance with statutes pursuant to which permissible investments are required to be held in this state, and other states, as applicable. Any statutory trust must be terminated upon extinguishment of all of the licensee's outstanding money transmission obligations.
5. The commissioner by rule or by order may allow other types of investments that the commissioner determines are of sufficient liquidity and quality to be a permissible investment. The commissioner may participate in efforts with other state regulators to determine that other types of investments are of sufficient liquidity and quality to be a permissible investment.

### **13-09.1-35. Types of permissible investments.**

1. The following investments are permissible under section 13-09.1-34:
  - a. Cash, including demand deposits, savings deposits, and funds in such accounts held for the benefit of the licensee's customers in a federally insured depository financial institution, and cash equivalents including automated clearinghouse items in transit to the licensee and automated clearinghouse items or international wires in transit to a payee, cash in transit via armored car, cash in smart safes, cash in licensee-owned locations, debit card or credit card-funded transmission receivables owed by any bank, or money market mutual funds rated "AAA" by S&P Global, or the equivalent from any eligible rating service.
  - b. Certificates of deposit or senior debt obligations of an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. Section 1813], or as defined under the federal Credit Union Act [12 U.S.C. Section 1781].
  - c. An obligation of the United States or a commission, agency, or instrumentality thereof; an obligation that is guaranteed fully as to principal

and interest by the United States; or an obligation or instrumentality of a state or a governmental subdivision, agency, or instrumentality thereof.

- d. The full drawable amount of an irrevocable standby letter of credit for which the stated beneficiary is the commissioner that stipulates that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds up to the letter of credit amount within seven days of presentation of the items required by paragraph 3 of subdivision d of subsection 1.

(1) The letter of credit must:

- (a) Be issued by a federally insured depository financial institution, a foreign bank that is authorized under federal law to maintain a federal agency or federal branch office in a state or states, or a foreign bank that is authorized under state law to maintain a branch in a state that:

[1] Bears an eligible rating or whose parent company bears an eligible rating; and

[2] Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks, credit unions, and trust companies;

- (b) Be irrevocable, unconditional, and indicate that it is not subject to any condition or qualifications outside of the letter of credit;

- (c) Not contain reference to any other agreements, documents, or entities, or otherwise provide for any security interest in the licensee; and

- (d) Contain an issue date and expiration date, and expressly provide for automatic extension, without a written amendment, for an additional period of one year from the present or each future expiration date, unless the issuer of the letter of credit notifies the commissioner in writing by certified or registered mail or courier mail or other receipted means, at least sixty days before any expiration date, that the irrevocable letter of credit will not be extended.

- (2) In the event of any notice of expiration or nonextension of a letter of credit issued under subparagraph d of paragraph 1 of subdivision d of subsection 1, the licensee shall be required to demonstrate to the satisfaction of the commissioner, fifteen days prior to expiration, that the licensee maintains and will maintain permissible investments in accordance with subsection 1 of section 13-09.1-34 upon the expiration of the letter of credit. If the licensee is not able to do so, the commissioner may draw on the letter of credit in an amount up to the amount necessary to meet the licensee's requirements to maintain permissible investments in accordance with subsection 1 of section 13-09.1-34. Any such draw must be offset against the licensee's outstanding money transmission obligations. The drawn funds must be held in trust by the commissioner or the commissioner's designated agent, to the extent authorized by law, as agent for the benefit of the

- purchasers and holders of the licensee's outstanding money transmission obligations.
- (3) The letter of credit must provide that the issuer of the letter of credit will honor, at sight, a presentation made by the beneficiary to the issuer of the following documents on or prior to the expiration date of the letter of credit:
- (a) The original letter of credit, including any amendments; and
  - (b) A written statement from the beneficiary stating that any of the following events have occurred:
    - [1] The filing of a petition by or against the licensee under the federal bankruptcy code [11 U.S.C. Section 101-110], for bankruptcy or reorganization;
    - [2] The filing of a petition by or against the licensee for receivership, or the commencement of any other judicial or administrative proceeding for its dissolution or reorganization;
    - [3] The seizure of assets of a licensee by a commissioner pursuant to an emergency order issued in accordance with applicable law, on the basis of an action, violation, or condition that has caused or is likely to cause the insolvency of the licensee; or
    - [4] The beneficiary has received notice of expiration or nonextension of a letter of credit and the licensee failed to demonstrate to the satisfaction of the beneficiary that the licensee will maintain permissible investments in accordance with subsection 1 of section 13-09.1-34 upon the expiration or nonextension of the letter of credit.
- (4) The commissioner may designate an agent to serve on the commissioner's behalf as beneficiary to a letter of credit so long as the agent and letter of credit meet requirements established by the commissioner. The commissioner's agent may serve as agent for multiple licensing authorities for a single irrevocable letter of credit if the proceeds of the drawable amount for the purposes of subdivision d of subsection 1 are assigned to the commissioner.
- (5) The commissioner may participate in multistate processes designed to facilitate the issuance and administration of letters of credit, including services provided by the nationwide system and state regulatory registry, LLC.
- e. One hundred percent of the surety bond or deposit provided for under section 13-09.1-33 that exceeds the average daily money transmission liability in this state.
2. Unless permitted by the commissioner by rule or by order to exceed the limit as set forth herein, the following investments are permissible under section 13-09.1-34 to the extent specified:

- a. Receivables that are payable to a licensee from its authorized delegates in the ordinary course of business that are less than seven days old, up to fifty percent of the aggregate value of the licensee's total permissible investments:
- b. Of the receivables permissible under subdivision a of subsection 2, receivables that are payable to a licensee from a single authorized delegate in the ordinary course of business may not exceed ten percent of the aggregate value of the licensee's total permissible investments; and
- c. The following investments are permissible up to twenty percent per category and combined up to fifty percent of the aggregate value of the licensee's total permissible investments:
  - (1) A short-term, up to six months, investment bearing an eligible rating;
  - (2) Commercial paper bearing an eligible rating;
  - (3) A bill, note, bond, or debenture bearing an eligible rating;
  - (4) United States tri-party repurchase agreements collateralized at one hundred percent or more with United States government or agency securities, municipal bonds, or other securities bearing an eligible rating;
  - (5) Money market mutual funds rated less than "AAA" and equal to or higher than "A-" by S&P Global, or the equivalent from any other eligible rating service; and
  - (6) A mutual fund or other investment fund composed solely and exclusively of one or more permissible investments listed in subdivisions a through c of subsection 1.
- d. Cash, including demand deposits, savings deposits, and funds in such accounts held for the benefit of the licensee's customers, at foreign depository institutions are permissible up to ten percent of the aggregate value of the licensee's total permissible investments if the licensee has received a satisfactory rating in its most recent examination and the foreign depository institution:
  - (1) Has an eligible rating;
  - (2) Is registered under the Foreign Account Tax Compliance Act;
  - (3) Is not located in any country subject to sanctions from the office of foreign assets control; and
  - (4) Is not located in a high-risk or noncooperative jurisdiction as designated by the financial action task force.

### **13-09.1-36. Suspension and revocation.**

1. The commissioner may suspend or revoke a license or order a licensee to revoke the designation of an authorized delegate if:

- a. The licensee violates this chapter or a rule adopted or an order issued under this chapter;
  - b. The licensee does not cooperate with an examination or investigation by the commissioner;
  - c. The licensee engages in fraud, intentional misrepresentation, or gross negligence;
  - d. An authorized delegate is convicted of a violation of a state or federal anti-money laundering statute, or violates a rule adopted or an order issued under this chapter, as a result of the licensee's willful misconduct or willful blindness;
  - e. The competence, experience, character, or general fitness of the licensee, authorized delegate, person in control of a licensee, key individual, or responsible person of the authorized delegate indicates that it is not in the public interest to permit the person to provide money transmission;
  - f. The licensee engages in an unsafe or unsound practice;
  - g. The licensee is insolvent, suspends payment of its obligations, or makes a general assignment for the benefit of its creditors; or
  - h. The licensee does not remove an authorized delegate after the commissioner issues and serves upon the licensee a final order, including a finding that the authorized delegate has violated this chapter.
2. In determining whether a licensee is engaging in an unsafe or unsound practice, the commissioner may consider the size and condition of the licensee's money transmission, the magnitude of the loss, the gravity of the violation of this chapter, and the previous conduct of the person involved.

### **13-09.1-37. Suspension and revocation of authorized delegates.**

1. The commissioner may issue an order suspending or revoking the designation of an authorized delegate, if the commissioner finds that:
  - a. The authorized delegate violated this chapter or a rule adopted or an order issued under this chapter;
  - b. The authorized delegate did not cooperate with an examination or investigation by the commissioner;
  - c. The authorized delegate engaged in fraud, intentional misrepresentation, or gross negligence;
  - d. The authorized delegate is convicted of a violation of a state or federal anti-money laundering statute;
  - e. The competence, experience, character, or general fitness of the authorized delegate or a person in control of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to provide money transmission; or
  - f. The authorized delegate is engaging in an unsafe or unsound practice.

2. In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the commissioner may consider the size and condition of the authorized delegate's provision of money transmission, the magnitude of the loss, the gravity of the violation of this chapter or a rule adopted or order issued under this chapter, and the previous conduct of the authorized delegate.
3. An authorized delegate may apply for relief from a suspension or revocation of designation as an authorized delegate according to procedures prescribed by the commissioner.

#### **13-09.1-38. Orders to cease and desist.**

1. If the commissioner determines that a violation of this chapter or of a rule adopted or an order issued under this chapter by a licensee or authorized delegate is likely to cause immediate and irreparable harm to the licensee, its customers, or the public as a result of the violation, or cause insolvency or significant dissipation of assets of the licensee, the commissioner may issue an order requiring the licensee or authorized delegate to cease and desist from the violation. The order becomes effective upon issuance.
2. The commissioner may issue an order against a licensee to cease and desist from providing money transmission through an authorized delegate that is the subject of a separate order by the commissioner.
3. An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to chapter 28-32.
4. An order to cease and desist expires unless the commissioner commences an administrative proceeding pursuant to chapter 28-32 within ten days after it is issued.

#### **13-09.1-39. Consent orders.**

The commissioner may enter into a consent order at any time with a person to resolve a matter arising under this chapter or a rule adopted or order issued under this chapter. A consent order must be signed by the person to whom it is issued or by the person's authorized representative, and must indicate agreement with the terms contained in the order. A consent order may provide that it does not constitute an admission by a person that this chapter or a rule adopted or an order issued under this chapter has been violated.

#### **13-09.1-40. Criminal penalties.**

1. A person that intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under this chapter or that intentionally makes a false entry or omits a material entry in such a record is guilty of a class C felony.
2. A person that knowingly engages in an activity for which a license is required under this chapter without being licensed under this chapter is guilty of a class C felony.

#### **13-09.1-41. Civil penalties.**

The commissioner may assess a civil penalty against a person that violates this chapter or a rule adopted or an order issued under this chapter in an amount not to exceed one thousand dollars per day for each day that the violation is outstanding, plus this state's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney's fees. Each transaction in violation of this chapter and each day that a violation continues is a separate violation. A civil money penalty collected under this section must be paid to the department of financial institutions and deposited in the financial institutions regulatory fund.

**13-09.1-42. Unlicensed persons.**

1. If the commissioner has reason to believe that a person has violated or is violating section 13-09.1-09, the commissioner may issue an order to show cause why an order to cease and desist should not issue requiring that the person cease and desist from the violation of section 13-09.1-09.
2. In an emergency, the commissioner may petition the district court of Burleigh County for the issuance of a temporary restraining order ex parte pursuant to the rules of civil procedure.
3. An order to cease and desist becomes effective upon service upon the unlicensed person.
4. An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to chapter 28-32.

**13-09.1-43. Transition period.**

This chapter goes into effect August 1, 2023. For current licensees, the effective date is upon license renewal, but no later than December 31, 2023.

**13-09.1-44. Definitions.**

For the purposes of sections 13-09.1-44 through 13-09.1-49, the following definitions apply:

1. "Control of virtual currency", when used in reference to a transaction or relationship involving virtual currency, means the power to execute unilaterally or prevent indefinitely a virtual-currency transaction.
2. "Exchange", used as a verb, means to assume control of virtual currency from or on behalf of a person, at least momentarily, to sell, trade, or convert:
  - a. Virtual currency for money, bank credit, or one or more forms of virtual currency; or
  - b. Money or bank credit for one or more forms of virtual currency.
3. "Transfer" means to assume control of virtual currency from or on behalf of a person and to:
  - a. Credit the virtual currency to the account of another person;
  - b. Move the virtual currency from one account of a person to another account of the same person; or

- c. Relinquish control of virtual currency to another person.
4. "United States dollar equivalent of virtual currency" means the equivalent value of a particular virtual currency in United States dollars shown on a virtual-currency exchange based in the United States for a particular date or period specified in this chapter.
5. "Virtual currency":
- a. Means a digital representation of value that:
- (1) Is used as a medium of exchange, unit of account, or store of value; and
- (2) Is not money, whether or not denominated in money; and
- b. Does not include:
- (1) A transaction in which a merchant grants, as part of an affinity or rewards program, value that cannot be taken from or exchanged with the merchant for money, bank credit, or virtual currency; or
- (2) A digital representation of value issued by or on behalf of a publisher and used solely within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform.
6. "Virtual-currency administration" means issuing virtual currency with the authority to redeem the currency for money, bank credit, or other virtual currency.
7. "Virtual-currency business activity" means:
- a. Exchanging, transferring, or storing virtual currency or engaging in virtual-currency administration, whether directly or through an agreement with a virtual-currency control-services vendor;
- b. Holding electronic precious metals or electronic certificates representing interests in precious metals on behalf of another person or issuing shares or electronic certificates representing interests in precious metals; or
- c. Exchanging one or more digital representations of value used within one or more online games, game platforms, or family of games for:
- (1) Virtual currency offered by or on behalf of the same publisher from which the original digital representation of value was received; or
- (2) Money or bank credit outside the online game, game platform, or family of games offered by or on behalf of the same publisher from which the original digital representation of value was received.
8. "Virtual-currency control-services vendor" means a person that has control of virtual currency solely under an agreement with a person that, on behalf of another person, assumes control of virtual currency.

**13-09.1-45. Scope.**

1. This chapter does not apply to the exchange, transfer, or storage of virtual currency or to virtual-currency administration to the extent the Electronic Fund Transfer Act of 1978 [15 U.S.C. Sections 1693-1693r], the Securities Exchange Act of 1934 [15 U.S.C. Sections 78a-78oo], the Commodities Exchange Act of 1936 [7 U.S.C. Sections 1-27f], or chapter 10-04 govern the activity.
2. Sections 13-09.1-44 through 13-09.1-49 do not apply to activity by:
  - a. A person that:
    - (1) Contributes only connectivity software or computing power to a decentralized virtual currency, or to a protocol governing transfer of the digital representation of value;
    - (2) Provides only data storage or security services for a business engaged in virtual-currency business activity and does not otherwise engage in virtual-currency business activity on behalf of another person; or
    - (3) Provides only to a person otherwise exempt from this chapter virtual currency as one or more enterprise solutions used solely among each other and has no agreement or relationship with a person that is an end-user of virtual currency;
  - b. A person using virtual currency, including creating, investing, buying or selling, or obtaining virtual currency as payment for the purchase or sale of goods or services, solely:
    - (1) On its own behalf;
    - (2) For personal, family, or household purposes; or
    - (3) For academic purposes;
  - c. A person whose virtual-currency business activity with or on behalf of persons is reasonably expected to be valued, in the aggregate, on an annual basis at five thousand dollars or less, measured by the United States dollar equivalent of virtual currency;
  - d. An attorney to the extent of providing escrow services to a person;
  - e. A title insurance company to the extent of providing escrow services to a person;
  - f. A securities intermediary, as defined in chapter 41-08, or a commodity intermediary, as defined in chapter 41-09, that:
    - (1) Does not engage in the ordinary course of business in virtual-currency business activity with or on behalf of a person in addition to maintaining securities accounts or commodities accounts and is regulated as a securities intermediary or commodity intermediary under federal law, law of this state other than this chapter, or law of another state; and

- (2) Affords a person protections comparable to those set forth in section 13-09.1-10;
- g. A secured creditor under chapter 41-09 or creditor with a judicial lien or lien arising by operation of law on collateral that is virtual currency, if the virtual-currency business activity of the creditor is limited to enforcement of the security interest in compliance with chapter 41-09 or lien in compliance with the law applicable to the lien;
- h. A virtual-currency control-services vendor; or
- i. A person that:
- (1) Does not receive compensation from a person for:
- (a) Providing virtual-currency products or services; or
- (b) Conducting virtual-currency business activity; or
- (2) Is engaged in testing products or services with the person's own funds.
3. The commissioner may determine that a person or class of persons, given facts particular to the person or class, should be exempt from this chapter, whether the person or class is covered by requirements imposed under federal law on a money service business.

**13-09.1-46. Conditions precedent to engaging in virtual-currency business activity.**

1. A person may not engage in virtual-currency business activity, or hold itself out as being able to engage in virtual-currency business activity, with or on behalf of another person unless the person is:
- a. Licensed in this state by the commissioner pursuant to section 13-09.1-13;  
or
- b. Exempt from licensing under section 13-09.1-02.
2. A person that is licensed to engage in virtual-currency business activity is engaged in the business of money transmission and is subject to the requirements of this chapter.

**13-09.1-47. Required disclosures.**

1. A licensee that engages in virtual-currency business activity shall provide to a person who uses the licensee's products or services the disclosures required by subsection 2 and any additional disclosure the commissioner by rule or order determines reasonably necessary for the protection of persons. The commissioner shall determine by rule or order the time and form required for disclosure. A disclosure required by this section must be made separately from any other information provided by the licensee and in a clear and conspicuous manner in a record the person may keep. A licensee may propose for the commissioner's approval alternate disclosure as appropriate for the licensee's virtual-currency business activity with or on behalf of a person.

2. Before establishing a relationship with a person, a licensee shall disclose, to the extent applicable to the virtual-currency business activity the licensee will undertake with the person, including:
  - a. A schedule of fees and charges the licensee may assess, the manner by which fees and charges will be calculated if they are not set in advance and disclosed, and the timing of the fees and charges;
  - b. Whether the product or service provided by the licensee is covered by:
    - (1) A form of insurance or is otherwise guaranteed against loss by an agency of the United States:
      - (a) Up to the full United States dollar equivalent of virtual currency purchased from the licensee or for control of virtual currency by the licensee as of the date of the placement or purchase, including the maximum amount provided by insurance under the federal deposit insurance corporation, the national credit union administration, or otherwise available from the securities investor protection corporation; or
      - (b) If not provided at the full United States dollar equivalent of virtual currency purchased from the licensee or for control of virtual currency by the licensee, the maximum amount of coverage for each person expressed in the United States dollar equivalent of the virtual currency; or
    - (2) Private insurance against theft or loss, including cyber theft or theft by other means;
  - c. The irrevocability of a transfer or exchange and any exception to irrevocability;
  - d. A description of:
    - (1) Liability for an unauthorized, mistaken, or accidental transfer or exchange;
    - (2) The person's responsibility to provide notice to the licensee of the transfer or exchange;
    - (3) The basis for any recovery by the person from the licensee;
    - (4) General error-resolution rights applicable to the transfer or exchange; and
    - (5) The method for the person to update the person's contact information with the licensee;
  - e. That the date or time when the transfer or exchange is made and the person's account is debited may differ from the date or time when the person initiates the instruction to make the transfer or exchange;

- f. Whether the person has a right to stop a preauthorized payment or revoke authorization for a transfer and the procedure to initiate a stop-payment order or revoke authorization for a subsequent transfer;
  - g. The person's right to receive a receipt, trade ticket, or other evidence of the transfer or exchange;
  - h. The person's right to at least thirty days' notice of a change in the licensee's fee schedule, other terms and conditions of operating its virtual-currency business activity with the person and the policies applicable to the person's account; and
  - i. That virtual currency is not money.
3. Except as otherwise provided in subsection 4, at the conclusion of a virtual-currency transaction with or on behalf of a person, a licensee shall provide the person a confirmation in a record which contains:
- a. The name and contact information of the licensee, including information the person may need to ask a question or file a complaint;
  - b. The type, value, date, precise time, and amount of the transaction; and
  - c. The fee charged for the transaction, including any charge for conversion of virtual currency to money, bank credit, or other virtual currency.
4. If a licensee discloses it will provide a daily confirmation in the initial disclosure under subsection 3, the licensee may elect to provide a single, daily confirmation for all transactions with or on behalf of a person on that day instead of a per-transaction confirmation.

#### **13-09.1-48. Property interests and entitlement to virtual currency.**

- 1. A licensee that has control of virtual currency for one or more persons shall maintain control of virtual currency in each type of virtual currency sufficient to satisfy the aggregate entitlements of the persons to the type of virtual currency.
- 2. If a licensee violates subsection 1, the property interests of the persons in the virtual currency are pro rata property interests in the type of virtual currency to which the persons are entitled, without regard to the time the persons became entitled to the virtual currency or the licensee obtained control of the virtual currency.
- 3. The virtual currency referred to in this section is:
  - a. Held for the persons entitled to the virtual currency;
  - b. Not property of the licensee;
  - c. Not subject to the claims of creditors of the licensee; and
  - d. Deemed a permissible investment under this chapter.

#### **13-09.1-49. Additional requirement and clarifications for virtual-currency business activities.**

1. A licensee engaged in virtual-currency business activities must comply with all provisions of this chapter to the extent applicable to the licensee's activities.
2. A licensee engaged in virtual-currency business activities may include in its calculation of tangible net worth virtual currency, measured by the average value of the virtual currency in United States dollar equivalent over the prior six months, excluding control of virtual currency for a person entitled to the protections pursuant to section 13-09.1-48.
3. A licensee shall maintain, for all virtual-currency business activity with or on behalf of a person five years after the date of the activity, a record of:
  - a. Each transaction of the licensee with or on behalf of the person or for the licensee's account in this state, including:
    - (1) The identity of the person;
    - (2) The form of the transaction;
    - (3) The amount, date, and payment instructions given by the person; and
    - (4) The account number, name, and United States postal service address of the person, and, to the extent feasible, other parties to the transaction;
  - b. The aggregate number of transactions and aggregate value of transactions by the licensee with or on behalf of the person and for the licensee's account in this state, expressed in United States dollar equivalent of virtual currency for the previous twelve calendar months;
  - c. Each transaction in which the licensee exchanges one form of virtual currency for money or another form of virtual currency with or on behalf of the person;
  - d. A general ledger posted at least monthly that lists all assets, liabilities, capital, income, and expenses of the licensee;
  - e. Each business-call report the licensee is required to create or provide to the department of financial institutions or the nationwide system;
  - f. Bank statements and bank reconciliation records for the licensee and the name, account number, and United States postal service address of each bank the licensee uses in the conduct of its virtual-currency business activity with or on behalf of the person;
  - g. A report of any dispute with the person; and
  - h. A report of any virtual-currency business activity transaction with or on behalf of a person which the licensee was unable to complete.
4. A licensee shall maintain records required by subsection 3 in a form that enables the commissioner to determine whether the licensee is in compliance with this chapter, any court order, and law of this state other than this chapter.

**SECTION 3. REPEAL.** Chapter 13-09 of the North Dakota Century Code is repealed.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 138

### SENATE BILL NO. 2090

(Industry and Business Committee)  
(At the request of the Department of Financial Institutions)

AN ACT to create and enact chapter 13-12 of the North Dakota Century Code, relating to residential mortgage lenders; to amend and reenact sections 13-04.1-01, 13-04.1-02.1, 13-04.1-03, 13-04.1-08, 13-04.1-08.1, 13-04.1-09, 13-04.1-09.3, 13-04.1-10, 13-04.1-13, 13-04.1-14, and 13-04.1-17 of the North Dakota Century Code, relating to money brokers; to repeal section 13-04.1-16 of the North Dakota Century Code, relating to call reports; to provide a penalty; and to provide for application.

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

**SECTION 1. AMENDMENT.** Section 13-04.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **13-04.1-01. Administration.**

The department of financial institutions shall use its facilities to administer and enforce this chapter. ~~Any person or persons delegated to administer this chapter may not have financial interests directly or indirectly in any business which is subject to this chapter.~~ The department has the power to promulgate rules and regulations having the force and effect of law, reasonably necessary to carry out the provisions of this chapter, in accordance with chapter 28-32. Any hearing held and any orders issued pursuant to this chapter must be in accordance with chapter 28-32. In addition to those powers set forth in chapter 28-32, the department has additional powers as set forth in this chapter.

**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. Residential mortgage lenders licensed under chapter 13-12;
6. Individuals licensed under chapter 13-10 solely pursuant to the individual's official duties as a mortgage loan originator;

- 6-7. State or federal agencies and employees of state or federal agencies solely pursuant to the individual's official duties as an employee of the state or federal agency;
- 7-8. Institutions chartered by the farm credit administration;
- 8-9. Trust companies;
- 9-10. Any other person or business regulated and licensed to lend money by the state of North Dakota;
- 10-11. 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;
- 11-12. Any person, retail seller, or manufacturer providing or arranging financing for its own property or inventory held as a normal course of business, or to leases on any real property;
- 12-13. A bona fide pawnbrokering transaction made by a pawnbroker licensed by a North Dakota county or municipality;
14. A certified development corporation that qualifies as a nonprofit entity under section 501(c)(3) of the federal Internal Revenue Code [26 U.S.C. 501(c)(3)] in the offers of:
- a. Loan products primarily limited to the small business administration, United States department of agriculture, or other government loan products; or
  - b. Nongovernmental loan products that are limited to loans to promote community development or home ownership, and these loans are offered with favorable terms including an interest rate at or below the wall street journal prime rate and loan fees of less than a quarter percent of the loan origination balance;
- 13-15. A nonprofit corporation that qualifies as a nonprofit entity under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)] which is not primarily in the business of soliciting or brokering loans, if the nonprofit corporation makes five or fewer loans in a given calendar year, makes these loans to promote community development or home ownership, and offers these loans on favorable terms, including an interest rate at or below the wall street journal prime rate and loan fees of less than a quarter percent of the loan origination balance.

**SECTION 3. AMENDMENT.** Section 13-04.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-03. Application for money broker license.**

Every application for a money broker license or branch registration, or for a renewal thereof, must be made upon forms designed and furnished by the department of financial institutions and must contain any information which the department shall deem necessary and proper. A branch registration that constitutes a net branch or net branching arrangement is prohibited. The department may further

require any ~~application~~applicant to provide additional information which is not requested on the application form. The applicant must register with the North Dakota secretary of state if so required.

**SECTION 4. AMENDMENT.** Section 13-04.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-08. Revocation of license - Suspension of license - Surrender of license.**

1. The commissioner may issue ~~and serve~~ upon any licensee an order suspending or revoking a licensee's license if the commissioner finds that:
  - a. The licensee has failed to pay the annual license fee under this chapter or any examination fee imposed by the commissioner under the authority of this chapter.
  - b. The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this chapter or any regulation or order lawfully made pursuant to and within the authority of this chapter.
  - c. Any fact or condition existing at the time of the original application for such license which clearly would have warranted the department of financial institutions in refusing originally to issue such license.
  - d. The licensee has failed to maintain the required bond.
  - e. The licensee has failed to maintain registration with the secretary of state if so required.
2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If no hearing is requested within twenty days of the date the order is served upon the licensee, ~~or if the order is final.~~ If a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter a final order. The final order shall be final suspending or revoking the license.
4. If the commissioner finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of such license pending investigation, it may, ~~upon written notice,~~ enter an order suspending such license for a period not exceeding the time required to serve upon the licensee written notice plus sixty days, pending the holding of a hearing as prescribed in this chapter.
5. Any licensee may surrender the licensee's license by ~~delivering it to~~ providing the department of financial institutions with written notice of its surrender, but such surrender does not affect the licensee's civil or criminal liability for acts committed prior thereto.

**SECTION 5. AMENDMENT.** Section 13-04.1-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-08.1. Suspension and removal of money broker officers and employees.**

1. The commissioner of financial institutions may issue ~~and serve~~ upon a current or former money broker officer or employee and upon the licensee involved an order stating:
  - a. That the current or former officer or employee is ~~willfully~~ engaging or has ~~willfully~~ engaged in any of the following conduct:
    - (1) Violating a law, rule, order, or written agreement with the commissioner.
    - (2) Engaging in harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving lending activity.
    - (3) Performing an act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.
  - b. The term of the suspension or removal from employment and participation within the conduct or the affairs of a ~~money broker~~financial corporation, financial institution, credit union, or any other entity licensed by the department of financial institutions.
2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If a hearing is not requested within twenty days of the date the order is served, ~~or if the order shall be final.~~ If a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter a final order. The final order shall be final suspending or removing the current or former employee. The current or former officer or employee may request a termination of the final order after a period of no less than three years.
4. A contested or default suspension or removal order is effective immediately upon ~~service of the final order~~issuance on the current or former officer or employee and upon the licensee. A consent order is effective as agreed. Any current or former officer or employee suspended or removed from employment and participation within the conduct or the affairs of a money broker pursuant to this section is not eligible, while under suspension or removal, to be employed or otherwise participate in the affairs of any financial corporation, financial institution, credit union, or any other entity licensed by the department of financial institutions.
5. When any current or former officer or employee, or other person participating in the conduct of the affairs of a licensee is charged with a felony in state or federal court which involves dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from further participation in the affairs of the money broker, or both. The order is effective immediately upon ~~service~~issuance of the order on the licensee and the person charged and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial diversion, conviction or agreement to plea to lesser charges, or similar state order or judgment is entered, the commissioner 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 from pursuing administrative or civil remedies.

6. ~~Under this section, a person engages in conduct "willfully" if the person acted intentionally in the sense that the person was aware of what the person was doing.~~

**SECTION 6. AMENDMENT.** Section 13-04.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-09. Prohibited acts and practices.**

It is a violation of this chapter for a person subject to this chapter to ~~knowingly~~:

1. Make or cause to be made any material false statement or representation in any application or other document or statement required to be filed under any provision of this chapter, or to omit to state any material statement or fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.
2. Directly or indirectly, employ any device, scheme, or artifice to defraud or mislead borrowers or lenders to defraud any person.
3. Directly or indirectly, make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading in connection with the procurement or promise of procurement of any lender or loan funds.
4. Engage in any unfair or deceptive practice toward any person.
5. Obtain property by fraud or misrepresentation.
6. 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.
7. 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.
8. Fail to make disclosures as required by this chapter and any other applicable state or federal law and regulations.
9. Fail to comply with this chapter or rules adopted 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.
10. 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.
11. 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~~multistate licensing

system and registry or in connection with any investigation conducted by the commissioner or another governmental agency.

12. 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 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.
13. Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter.
14. 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.
15. Fail to truthfully account for moneys belonging to a party to a loan transaction.
16. Conduct another business within the same office, suite, room, or place of business at which the licensee engages in money broker business unless the commissioner provides written authorization after a determination the other business is not contrary to the best interests of any borrower or potential borrower.
17. Enter any agreement that constitutes a precomputed loan.

**SECTION 7. AMENDMENT.** Section 13-04.1-09.3 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-09.3. Maximum charges permitted for loans - Installment payments - Permitted charges.**

1. Interest charges and other fees must be set at rates, amounts, and terms as agreed to by the parties within the loan contract. However, a licensee may not contract for or receive finance charges pursuant to a loan in excess of an annual rate of thirty-six percent, including all charges and fees necessary for the extension of credit incurred at the time of origination.
2. Additional charges may be assessed for nonpayment or late payment as agreed to by the parties within the loan contract. However, a licensee may not contract for or receive charges in excess of five percent of the payment. For loans originated for fifty thousand dollars or less, these charges may not exceed twenty dollars for each nonpayment or late payment. The charge may be collected at the time of the default or any time after default. 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 payment, a charge may not be made for the subsequent default. ~~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.~~
3. The restrictions outlined in subsections 1, 2, and 4 do not apply to court costs; lawful fees for the filing, recording, or releasing in any public office of any instrument securing a loan; or the identifiable charge or premium for insurance provided for by rule.

4. Additional restrictions for small loans originated for less than two thousand dollars include the following:
  - a. Installment loans must be paid in equal installments as agreed to by the parties within the loan contract. However, the maximum term for installment loans may not exceed thirty-six months, and a balloon payment is prohibited.
  - b. Outstanding balances of existing loans may be refinanced into a new small loan of less than two thousand dollars, but the combination of any refinance fees along with any fees collected as part of the original loans may not exceed one hundred dollars per calendar year.
  - c. Additional charges may be assessed as part of a loan extension or deferment of payment agreed to by the parties within the agreement. However, a licensee may not contract for or receive charges in excess of one hundred dollars for these loan extensions or deferments per calendar year.

**SECTION 8. AMENDMENT.** Section 13-04.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-10. Orders and injunctions.**

Whenever it appears to the department of financial institutions either upon complaint or otherwise, that any person has engaged in, is engaging in, or is about to engage in any act or practice or transaction which is prohibited by this chapter, or by any order of the department issued pursuant to any section of this chapter or which is declared to be illegal in this chapter, the department may, in its discretion:

1. Issue any order which is effective upon issuance, including cease and desist, stop, and suspension orders, which it deems necessary or appropriate in the public interest or for the protection of the public; provided, however, that any person aggrieved by an order issued pursuant to this subsection may request a hearing before the department if such request is made within ten days after receipt of the order. Such hearing must be held in accordance with chapter 28-32 as must any appeal therefrom.
2. Apply to the district court of ~~any county in this state~~ Burleigh County, for an injunction restraining such person and the agents, employees, partners, officers, and directors of such person from continuing such act, practice, or transaction of engaging therein or doing any acts in furtherance thereof, and for such other and further relief as the facts may warrant. In any proceeding for an injunction, the department may apply for and on due showing be entitled to have issued the court's subpoena requiring the appearance forthwith of any defendants and their agents, employees, partners, officers, or directors, and the production of such documents, books, and records as may appear necessary for the hearing upon the petition for an injunction. Upon proof of any of the offenses described in this section, the court may grant such injunction as the facts may warrant. The court may not require the department to post a bond.

**SECTION 9. 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~~ one hundred thousand dollars for each occurrence and one thousand dollars per day for each day the violation continues after issuance of the order against any person who 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~~ department of financial institutions and deposited in the financial institutions regulatory fund.

**SECTION 10. AMENDMENT.** Section 13-04.1-14 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-14. 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, chapter 44-04, or section 6-01-07.1, regarding the privacy or confidentiality of any information or material provided to the nationwide ~~mortgage~~ mortgage multistate 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~~ mortgage multistate 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, chapter 44-04, or section 6-01-07.1.
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.
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 administrative process, unless with respect to any privilege held by the nationwide ~~mortgage~~ mortgage multistate 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. The commissioner shall take all necessary steps, under any applicable law or rule, to protect the disclosure of information or material that is subject to a

privilege or confidentiality under subsection 1. Records subject to a privilege or confidentiality under subsection 1 may be required to be disclosed only pursuant to an order of the court. The court ordering the disclosure shall issue a protective order to protect the confidential nature of the records.

5. Application of chapter 44-04 or section 6-01-07.1, relating to the disclosure of confidential supervisory information or any information or material described in subsection 1 which is inconsistent with subsection 1, is superseded by the requirements of this section.

**SECTION 11. AMENDMENT.** Section 13-04.1-17 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-17. Report to nationwide mortgagemultistate licensing system and registry.**

Notwithstanding state privacy law, the commissioner shall report regularly violations of this chapter, as well as enforcement actions and other relevant information, to the nationwide mortgagemultistate licensing system and registry subject to the provisions contained in section 13-10-15.

**SECTION 12.** Chapter 13-12 of the North Dakota Century Code is created and enacted as follows:

**13-12-01. Administration.**

The department of financial institutions shall administer and enforce this chapter. The department may promulgate rules and regulations having the force and effect of law, reasonably necessary to carry out the provisions of this chapter, in accordance with chapter 28-32. Any hearing held and any orders issued pursuant to this chapter must be in accordance with chapter 28-32. In addition to those powers set forth in chapter 28-32, the department has additional powers as set forth in this chapter.

**13-12-02. Definitions.**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Borrower" means an individual who seeks out, or is solicited by a residential mortgage lender for the purpose of residential mortgage lending.
2. "Commissioner" means the commissioner of the department of financial institutions.
3. "Net branch" means an office at which a licensed residential mortgage lender allows a separate person that does not hold a valid North Dakota residential mortgage lender license to originate loans under the license of the residential mortgage lender.
4. "Net branch arrangement" means an arrangement under which a licensed residential mortgage lender enters an agreement whereby its designated branch manager has the appearance of ownership of the licensee by, among other things, sharing in the profits or losses; establishing, leasing, or renting the branch premises; entering other contractual relationships with vendors such as for telephones, utilities, and advertising; having control of a corporate checkbook; or exercising control of personnel through the power to hire or fire such individuals. A person may be considered to be utilizing a net branch if the net branch agreement requires the branch manager to indemnify the licensee

for damages from any apparent, express, or implied agency representation by or through the branch's actions or if the agreement requires the branch manager to issue a personal check to cover operating expenses whether or not funds are available from an operating account of the licensee.

5. "Precomputed loan" means a loan that is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance.
6. "Residential mortgage lender" means a person that, in the ordinary course of business, engages in residential mortgage lending.
7. "Residential mortgage lending" means the act of arranging or providing residential mortgage loans as a form of financing, or advertising or soliciting either in print, by letter, in person, or otherwise, the right to find lenders or provide residential mortgage loans for a person.
8. "Residential mortgage loan" means residential mortgage loan as defined in subsection 12 of section 13-10-02.
9. "Residential real estate" means residential real estate as defined in subsection 13 of section 13-10-02.

### **13-12-03. Residential mortgage lender license required.**

Except as otherwise provided, a person other than a residential mortgage lender licensed and authorized under this chapter may not engage in residential mortgage lending in the state without a residential mortgage lender license issued by the commissioner. A person engages in residential mortgage lending if the borrower resides in North Dakota.

### **13-12-04. 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. Individuals licensed under chapter 13-10 solely pursuant to the individual's official duties as a mortgage loan originator;
6. State or federal agencies and employees of state or federal agencies solely pursuant to the individual's official duties as an employee of the state or federal agency;
7. Institutions chartered by the farm credit administration;
8. Trust companies;
9. 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;

10. A certified development corporation that qualifies as a nonprofit entity under section 501(c)(3) of the federal Internal Revenue Code [26 U.S.C. 501(c)(3)] in the offers of:
  - a. Loan products primarily limited to the small business administration, United States department of agriculture, or other government loan products; or
  - b. Nongovernmental loan products that are limited to loans to promote community development or home ownership, and these loans are offered with favorable terms including an interest rate at or below the wall street journal prime rate and loan fees of less than a quarter percent of the loan origination balance; or
11. A nonprofit corporation that qualifies as a nonprofit entity under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)] which is not primarily in the business of soliciting or brokering loans, if the nonprofit corporation makes five or fewer loans in a given calendar year, makes these loans to promote community development or home ownership, and offers these loans on favorable terms, including an interest rate at or below the wall street journal prime rate and loan fees of less than a quarter percent of the loan origination balance.

### **13-12-05. Application for residential mortgage lender license.**

Every application or renewal for a residential mortgage lender license or branch registration must be made upon forms designed and furnished by the department of financial institutions and must contain any information which the department deems necessary and proper. A branch registration that constitutes a net branch or net branching arrangement is prohibited. The department may further require any applicant to provide additional information which is not requested on the application form. The applicant must register with the secretary of state, if so required.

### **13-12-06. Fee to accompany application for residential mortgage lender 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 13-12-05. At the time of making the 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 four hundred dollars for the annual license fee. In addition, the applicant must pay a fifty dollar annual fee for each branch location registered to engage in residential mortgage lending in this state. Fees must be deposited in the financial institutions regulatory fund.

### **13-12-07. Surety bond required.**

1. Each licensee shall maintain a surety bond in an amount not less than fifty thousand dollars. The surety bond must be in a form prescribed by the commissioner.
2. When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond.
3. Immediately upon recovery of any action on the bond, the licensee shall file a new bond.

### **13-12-08. Minimum net worth required.**

A minimum net worth must be continuously maintained by every licensee in accordance with this section.

1. Minimum net worth must be maintained in the amount of twenty-five thousand dollars.
2. If the net worth of a licensee falls below the minimum net worth set forth in this section, the licensee shall provide a plan, subject to the approval of the commissioner, to increase the licensee's net worth to an amount in conformance with this section. Submission of a plan under this section must be made within twenty business days of a notice from the commissioner which states the licensee is not in compliance with subsection 1. If the licensee does not submit a plan under this section, fails to comply with an approved plan, or has repeated violations of subsection 1, the commissioner may revoke the license.

### **13-12-09. Expiration and renewal of license.**

All licenses expire on December thirty-first of each year and may be renewed. Renewals are effective the succeeding 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 license, the department may charge an additional fee of fifty dollars for the renewal of the license. A residential mortgage lender 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 residential mortgage lender 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 residential mortgage lender license granted to the previous owner continues in effect to the new purchaser until the application is either granted or denied.

### **13-12-10. Powers of the department of financial institutions.**

The department of financial institutions may:

1. Determine the qualifications of all applicants based on financial responsibility, financial condition, business experience, character, and general fitness which must reasonably warrant the belief that the applicant's business will be

conducted lawfully and fairly. In determining whether this qualification is met, and for the purpose of investigating compliance with the chapter, the commissioner may review and consider the relevant business records and capital adequacy of the applicant and the competence, experience, integrity, and financial ability of a person who is a member, partner, director, officer, or twenty-five percent or more shareholder of the applicant.

2. Establish codes of ethical conduct for licensees.

### **13-12-11. Manner in which records to be kept.**

Every residential mortgage lender licensed under this chapter shall keep a record of all sums collected by the residential mortgage lender and of all loans completed as a result of the lender's efforts for a period of six years from the date of last entry. The records of a licensee may be maintained electronically provided they can be reproduced upon request by the department of financial institutions and within the required statutory time period provided in this section. When a licensee ceases operations for any reason, the licensee shall inform the department of the location of the records. In addition, the licensee shall provide the name of the individual responsible for maintenance of the records. The licensee shall notify the department within ten business days of the change of the location of the records or the change of the individual responsible for maintenance of the records.

### **13-12-12. Revocation of license - Suspension of license - Surrender of license.**

1. The commissioner may issue upon any licensee an order suspending or revoking a licensee's license if the commissioner finds:
  - a. The licensee has failed to pay the annual license fee under this chapter or any examination fee imposed by the commissioner under the authority of this chapter.
  - b. The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this chapter or any regulation or order lawfully made pursuant to and within the authority of this chapter.
  - c. Any fact or condition existing at the time of the original application for such license which clearly would have warranted the department of financial institutions in refusing originally to issue a license.
  - d. The licensee has failed to maintain the required bond.
  - e. The licensee has failed to maintain registration with the secretary of state if so required.
2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If a hearing is not requested within twenty days of the date the order is served upon the licensee, the order is final. If a hearing is held and the commissioner finds the record so warrants, the commissioner may enter a final order. The final order suspending or revoking the license is final.

4. If the commissioner finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of the license pending investigation, it may enter an order suspending the license for a period not exceeding the time required to serve upon the licensee written notice plus sixty days, pending the holding of a hearing as prescribed in this chapter.
5. Any licensee may surrender the licensee's license by providing the department of financial institutions with written notice of its surrender, but a surrender does not affect the licensee's civil or criminal liability for acts committed before the surrender.

**13-12-13. Suspension and removal of residential mortgage lender officers and employees.**

1. The commissioner may issue and serve upon a current or former residential mortgage lender officer or employee and upon the licensee involved an order stating:
  - a. That the current or former officer or employee is engaging or has engaged in any of the following conduct:
    - (1) Violating a law, rule, order, or written agreement with the commissioner.
    - (2) Engaging in harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving lending activity.
    - (3) Performing an act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.
  - b. The term of the suspension or removal from employment and participation within the conduct or the affairs of a residential mortgage lender.
2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If a hearing is not requested within twenty days of the date the order is served, or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter a final order suspending or removing the current or former employee. The current or former officer or employee may request a termination of the final order after a period of no less than three years.
4. A contested or default suspension or removal order is effective immediately upon issuance on the current or former officer or employee and upon the licensee. A consent order is effective as agreed. Any current or former officer or employee suspended or removed from employment and participation within the conduct or the affairs of a residential mortgage lender pursuant to this section is not eligible, while under suspension or removal, to be employed or otherwise participate in the affairs of any financial corporation, financial institution, credit union, or any other entity licensed by the department of financial institutions.
5. When a current or former officer, employee, or other person participating in the conduct of the affairs of a licensee is charged with a felony in state or

federal court which involves dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from further participation in the affairs of the residential mortgage lender, or both. The order is effective immediately upon issuance and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial diversion, conviction or agreement to plea to lesser charges, or similar state order or judgment is entered, the commissioner 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 from pursuing administrative or civil remedies.

### **13-12-14. Prohibited acts and practices.**

It is a violation of this chapter for a person subject to this chapter to:

1. Make or cause to be made any material false statement or representation in any application or other document or statement required to be filed under any provision of this chapter, or to omit to state any material statement or fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.
2. Directly or indirectly, employ any device, scheme, or artifice to defraud or mislead borrowers or lenders to defraud any person.
3. Directly or indirectly, make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading in connection with the procurement or promise of procurement of any lender or loan funds.
4. Engage in any unfair or deceptive practice toward any person.
5. Obtain property by fraud or misrepresentation.
6. 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.
7. 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.
8. Fail to make disclosures as required by this chapter and any other applicable state or federal law and regulations.
9. Fail to comply with this chapter or rules adopted under this chapter, or fail to comply with any other state or federal law or rule, applicable to any business authorized or conducted under this chapter.
10. 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.

11. Negligently make any false statement or make any omission of material fact in connection with any information or reports filed with a governmental agency or the nationwide multistate licensing system and registry or in connection with any investigation conducted by the commissioner or another governmental agency.
12. 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 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.
13. Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter.
14. 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.
15. Fail to truthfully account for moneys belonging to a party to a loan transaction.
16. Conduct another business within the same office, suite, room, or place of business at which the licensee engages in mortgage lending business unless the commissioner provides written authorization after a determination the other business is not contrary to the best interests of any borrower or potential borrower.
17. Enter any agreement that constitutes a precomputed loan.

#### **13-12-15. Advance fees prohibited - Exception.**

A residential mortgage lender may not take any type of fee in advance before the funding of the loan, unless the residential mortgage lender is licensed under this chapter. A residential mortgage lender licensed under this chapter may accept an advance expense deposit which may not exceed the residential mortgage lender's good-faith estimate of the actual cost of any appraisal or credit reports performed by an independent appraiser or independent credit reporting agency and required by the originating lender for the evaluation of the potential borrower's loan application. Any expense deposit that exceeds the actual cost of any appraisal or credit report must be promptly refunded to the borrower or credited to the borrower's account at the time of the loan closing. A residential mortgage lender may also charge a fee in advance to lock an interest rate.

#### **13-12-16. Maximum charges permitted for loans - Installment payments - Permitted charges.**

1. Interest charges and other fees must be set at rates, amounts, and terms as agreed to by the parties within the loan contract. A licensee may not contract for or receive finance charges pursuant to a loan in excess of an annual rate of thirty-six percent, including all charges and fees necessary for the extension of credit incurred at the time of origination.
2. Additional charges may be assessed for nonpayment or late payment as agreed to by the parties within the loan contract. A licensee may not contract for or receive charges in excess of five percent of the payment. For loans

originated for fifty thousand dollars or less, these charges may not exceed twenty dollars for each nonpayment or late payment. The charge may be collected at the time of the default or any time after default. 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 payment, a charge may not be made for the subsequent default.

3. The restrictions outlined in subsections 1 and 2 do 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.

### **13-12-17. Orders and injunctions.**

Whenever it appears to the department of financial institutions either upon complaint or otherwise, that any person has engaged in, is engaging in, or is about to engage in any act or practice or transaction which is prohibited by this chapter, or by any order of the department issued pursuant to any section of this chapter or which is declared to be illegal in this chapter, the department may, in its discretion:

1. Issue any order which is effective upon issuance, including cease and desist, stop, and suspension orders, which it deems necessary or appropriate in the public interest or for the protection of the public, provided that any person aggrieved by an order issued pursuant to this subsection may request a hearing before the department if a request is made within ten days after receipt of the order. A hearing to appeal must be held in accordance with chapter 28-32.
2. Apply to the district court of Burleigh County for an injunction restraining the person and the agents, employees, partners, officers, and directors of the person from continuing the act, practice, or transaction of engaging or doing any acts in furtherance thereof, and for such other and further relief as the facts may warrant. In any proceeding for an injunction, the department may apply for and on due showing be entitled to have issued the court's subpoena requiring the appearance forthwith of any defendants and their agents, employees, partners, officers, or directors, and the production of such documents, books, and records as may appear necessary for the hearing upon the petition for an injunction. Upon proof of any of the offenses described in this section, the court may grant such injunction as the facts may warrant. The court may not require the department to post a bond.

### **13-12-18. Investigations, subpoenas, and examination authority.**

In addition to any authority allowed under this chapter, the commissioner may conduct investigations and examinations as follows:

1. The department of financial institutions in its discretion:
  - a. May make a public or private investigation or examination within or outside this state as it deems necessary to determine whether a person has violated or is about to violate any provision of this chapter or rule, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder. The licensee shall pay an investigation or examination fee and must be charged by the department of financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the visitation provided for by

- this section. Fees must be deposited in the financial institutions regulatory fund.
- b. May require or permit any person to file a statement in writing, under oath, or otherwise as the department determines, as to all the facts and circumstances concerning the matter to be investigated or examined.
  - c. May publish information concerning any violation of this chapter or any rule or order under this chapter.
2. For the purpose of any investigation, examination, or proceeding under this chapter, the department of financial institutions may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the department deems relevant or material to the inquiry.
  3. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court, upon application by the department of financial institutions, may issue to the person an order requiring the person to appear before the department there to produce documentary evidence if so ordered or to give evidence touching the matter in question under investigation or examination. Failure to obey the order of the court may be punished by the court as a contempt of court.
  4. A person is not excused from attending and testifying or from producing any document or record before the department of financial institutions, or in obedience to the subpoena of the department, or in any proceeding instituted by the department, on the grounds that the testimony or evidence, documentary or otherwise, required of a person may tend to incriminate the person or subject the person to a penalty forfeiture. An individual may not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after claiming the privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.
  5. 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 [15 U.S.C. 1681 et seq.]; 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.

6. For purposes of investigating violations or complaints arising under this chapter, or for purposes of examination, the commissioner may review, investigate, or examine any licensee or person subject to this chapter, as often as necessary in order to carry out the purposes of this chapter.
7. Upon request, each licensee or person subject to this chapter shall make available to the commissioner the books and records relating to the operations of the licensee or person subject to this chapter. The commissioner shall have access to the books, records, and interviews of the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee or person subject to this chapter concerning their business.
8. Each licensee 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. Other information deemed necessary to carry out the purposes of this section.
9. In making any investigation or examination authorized by this chapter, the commissioner may control access to any documents and records of the licensee or person under investigation or examination. 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, a person may not 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 may have access to the documents or records as necessary to conduct its ordinary business affairs.
10. In order to carry out the purposes of this section, the commissioner may:
  - a. Retain 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; and
  - e. Accept audit reports made by an independent certified public accountant for the licensee 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.
11. The authority of this section remains in effect, whether a licensee 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.
  12. A licensee or person subject to investigation or examination under this section may not knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

### **13-12-19. Response to department requests.**

An applicant, licensee, or other person subject to the provisions of this chapter shall comply with requests for information, documents, or other requests from the department of financial institutions within the time specified in the request, which must be a minimum of ten days, or, if no time is specified, within thirty days of the mailing of the request by the department of financial institutions. If the request for information is in regard to a new application or renewal of an existing application and is not received within the time specified in the request, or within thirty days of the mailing of the request, the department may deny the application.

### **13-12-20. Remedies not exclusive.**

The remedies provided for in this chapter are in addition to and not exclusive of any other remedies provided by law.

### **13-12-21. Penalty.**

A person or company 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 one hundred thousand dollars for each occurrence and one thousand dollars per day for each day the violation continues after issuance of the order against any person or company who 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 department of financial institutions and deposited in the financial institutions regulatory fund.

### **13-12-22. Confidentiality.**

To promote more effective regulation and reduce regulatory burden through supervisory information sharing:

1. Except as otherwise provided in the Secure and Fair Enforcement for Mortgage Licensing Act [Public Law 110-289, section 1512, 12 U.S.C. 5111, et seq.], the requirements under any federal law, chapter 44-04, or section

6-01-07.1, regarding the privacy or confidentiality of any information or material provided to the nationwide multistate 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 the information or material, continue to apply to the information or material after the information or material has been disclosed to the nationwide multistate licensing system and registry. The 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, chapter 44-04, or section 6-01-07.1.

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.
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 administrative process, unless with respect to any privilege held by the nationwide multistate licensing system and registry with respect to such information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.
4. The commissioner shall take all necessary steps, under any applicable law or rule, to protect the disclosure of information or material that is subject to a privilege or confidentiality under subsection 1. Records subject to a privilege or confidentiality under subsection 1 may be required to be disclosed only pursuant to an order of the court. The court ordering the disclosure shall issue a protective order to protect the confidential nature of the records.
5. Application of chapter 44-04 or section 6-01-07.1, relating to the disclosure of confidential supervisory information or any information or material described in subsection 1 which is inconsistent with subsection 1, is superseded by the requirements of this section.

#### **13-12-23. Change of name or address.**

A licensee is required to submit within twenty business days of the date of change notification of a change of name or change of address. The notification must be in the form prescribed by the commissioner.

#### **13-12-24. Call reports.**

Each licensee shall submit to the nationwide multistate licensing system and registry reports of condition which must be in the form and must contain the information as the nationwide multistate licensing system and registry may require.

#### **13-12-25. Report to nationwide multistate licensing system and registry.**

Notwithstanding state privacy law, the commissioner regularly shall report violations of this chapter, as well as enforcement actions and other relevant information, to the nationwide multistate licensing system and registry subject to the provisions contained in section 13-12-22.

**13-12-26. Disclosure of customer information.**

Except for provisions of chapter 6-08.1 which are inconsistent with this chapter, chapter 6-08.1 applies to all residential mortgage lenders licensed under this chapter.

**13-12-27. Notice to borrower regarding regulation by the department of financial institutions.**

The written contract must contain the following notice in capital letters: NOTICE: RESIDENTIAL MORTGAGE LENDERS ARE LICENSED AND REGULATED BY THE NORTH DAKOTA DEPARTMENT OF FINANCIAL INSTITUTIONS. THE DEPARTMENT OF FINANCIAL INSTITUTIONS HAS NOT PASSED ON THE MERITS OF THE CONTRACT AND LICENSING DOES NOT CONSTITUTE AN APPROVAL OF THE TERMS OR OF THE LENDERS ABILITY TO ARRANGE ANY LOAN. COMPLAINTS REGARDING THE SERVICES OF RESIDENTIAL MORTGAGE LENDERS SHOULD BE DIRECTED TO THE DEPARTMENT OF FINANCIAL INSTITUTIONS.

**SECTION 13. REPEAL.** Section 13-04.1-16 of the North Dakota Century Code is repealed.

**SECTION 14. APPLICATION.** Residential mortgage lenders holding a valid North Dakota money brokers license as of August 1, 2023, are not required to obtain a residential mortgage lenders license as required in section 13-12-03 until December 31, 2023. All other provisions of this chapter are applicable to residential mortgage lenders as of August 1, 2023.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 139

### HOUSE BILL NO. 1068

(Industry, Business and Labor Committee)  
(At the request of the Department of Financial Institutions)

AN ACT to create and enact chapter 13-13 of the North Dakota Century Code, relating to residential mortgage loan servicers; to provide a penalty; and to provide an appropriation.

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

**SECTION 1.** Chapter 13-13 of the North Dakota Century Code is created and enacted as follows:

##### **13-13-01. Administration.**

The department of financial institutions shall administer and enforce this chapter. The department has the power to promulgate rules and regulations having the force and effect of law, reasonably necessary to carry out the provisions of this chapter, in accordance with chapter 28-32. Any hearing held and any orders issued pursuant to this chapter must be in accordance with chapter 28-32. In addition to those powers set forth in chapter 28-32, the department has additional powers as set forth in this chapter.

##### **13-13-02. Definitions.**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Allowable assets for liquidity" means those assets that may be used to satisfy the liquidity requirements in this chapter, including unrestricted cash and cash equivalents and unencumbered investment grade assets held for sale or trade, which include mortgage-backed securities, obligations of government-sponsored enterprises, and United States treasury obligations.
2. "Board of directors" means the formal body established by an applicant or licensee that is responsible for corporate governance and compliance with this chapter.
3. "Commissioner" means the commissioner of the department of financial institutions.
4. "Corporate governance" means the structure of the institution and how it is managed, including the corporate rules, policies, processes, and practices used to oversee and manage the institution.
5. "Government-sponsored enterprises" means the federal national mortgage association (fannie mae), the government national mortgage association (ginnie mae), and the federal home loan mortgage corporation (freddie mac).

6. "Interim serviced prior to sale" means the activity of collecting a limited number of contractual mortgage payments immediately after origination on loans held for sale but prior to the loans being sold into the secondary market.
7. "Internal audit" means the internal activity of performing independent, objective assurance and consulting to evaluate and improve the effectiveness of company operations, risk management, internal controls, and governance processes.
8. "Large servicer" means a residential mortgage servicer with servicing portfolios of two thousand or more one-to-four unit residential mortgage loans serviced or subserviced for others, excluding whole loans owned, and loans being "interim" serviced prior to sale as of the most recent calendar year end, reported in the nationwide multistate licensing system and registry mortgage call report, and that operates in two or more states, districts, or territories of the United States either currently or as of the prior calendar year end. For entities within a holding company or affiliated group of companies' applicability must be at the large servicer level. This definition excludes servicers solely owning or conducting reverse mortgage servicing, or both, or the reverse mortgage portfolio administered by the large servicer.
9. "Lender" means any person that extends money to a borrower with the expectation of being repaid.
10. "Liquidity risk" means the potential that the servicer will be unable to meet its obligations as they come due because of an inability to liquidate assets or obtain adequate funding or that it cannot easily unwind or offset specific exposures.
11. "Mortgage call report" means the quarterly or annual report of residential real estate loan origination, servicing, and financial information completed by companies licensed in the nationwide multistate licensing system and registry.
12. "Mortgage servicing rights" refers to the contractual right to service residential mortgage loans on behalf of the owner of the associated mortgage in exchange for specified compensation in accordance with the servicing contract.
13. "Mortgage servicing rights investor" means entities that invest in and own mortgage servicing rights and rely on subservicers to administer the loans on their behalf. Mortgage servicing rights investors are often referred to as master servicers.
14. "Nationwide multistate licensing system and registry" means the registry developed by the conference of state bank supervisors and the American association of residential mortgage regulators and owned and operated by the state regulatory registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in financial services industries.
15. "Operating liquidity" means the funds necessary to perform normal business operations, such as payment of rent, salaries, interest expense, and other typical expenses associated with operating the entity.

16. "Records" means books, accounts, papers, records, and files, no matter in what format they are kept, which are used in conducting business under this chapter.
17. "Residential mortgage loan servicing" means receiving any scheduled periodic payments from a borrower pursuant to the terms of any federally related mortgage loan, including amounts for escrow accounts under section 10 of the Real Estate Settlement Procedures Act [12 U.S.C. 2609], and making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, servicing includes making payments to the borrower.
18. "Reverse mortgage" means a loan collateralized by real estate, typically made to borrowers over fifty-five years of age, which does not require contractual monthly payments and is typically repaid upon the death of the borrower through the sale of the home or refinance by the heirs.
19. "Risk management assessment" means the functional evaluations performed under the risk management program and reports provided to the board of directors under the relevant governance protocol.
20. "Risk management program" means the policies and procedures designed to identify, measure, monitor, and mitigate risk sufficient for the level of sophistication of the residential mortgage loan servicer.
21. "Service or servicing a loan" means on behalf of the lender or investor of a residential mortgage loan:
  - a. Collecting or receiving payments on existing obligations due and owing to the lender or investor, including payments of principal, interest, escrow amounts, and other amounts due;
  - b. Collecting fees due to the servicer;
  - c. Working with the borrower and the licensed lender or servicer to collect data and make decisions necessary to modify certain terms of those obligations either temporarily or permanently;
  - d. Otherwise finalizing collection through the foreclosure process; or
  - e. Servicing a reverse mortgage loan.
22. "Servicer" means the entity performing the routine administration of residential mortgage loans on behalf of the owner or owners of the related mortgages under the terms of a servicing contract.
23. "Servicing liquidity or liquidity" means the financial resources necessary to manage liquidity risk arising from servicing functions required in acquiring and financing mortgage servicing rights, hedging costs, including margin calls, associated with the mortgage servicing rights asset and financing facilities, and advances or costs of advance financing for principal, interest, taxes, insurance, and any other servicing-related advances.

24. "Subservicer" means the entity performing the routine administration of residential mortgage loans as agent of a servicer or mortgage servicing rights investor under the terms of a subservicing contract.
25. "Tangible net worth" means total equity less receivables due from related entities, less goodwill, and other intangibles less pledged assets.
26. "Whole loans" means loans where a mortgage and the underlying credit risk is owned and held on the balance sheet of the entity with all ownership rights.

### **13-13-03. Residential mortgage loan servicing license required.**

Except as otherwise provided, a person other than a residential mortgage loan servicer licensed and authorized under this chapter may not engage in residential mortgage loan servicing, either as a servicer, subservicer, or mortgage servicing rights investor, in the state without a residential mortgage loan servicer license issued by the commissioner. A person engages in residential mortgage loan servicing in the state if the borrower resides in North Dakota.

### **13-13-04. Entities exempted from licensing requirements.**

This chapter does not apply to:

1. Banks;
2. Credit unions;
3. Savings and loan associations;
4. State or federal housing finance agencies;
5. Institutions chartered by the farm credit administration; or
6. Not-for-profit mortgage servicers.

### **13-13-05. Application for residential mortgage loan servicer license.**

Every application for a residential mortgage loan servicer license, branch registration, or a renewal, must be made upon forms designed and furnished by the department of financial institutions and must contain any information which the department deems necessary and proper. The department may further require any applicant to provide additional information that is not requested on the application form. The applicant shall register with the North Dakota secretary of state if so required.

### **13-13-06. Fee to accompany application for residential mortgage loan servicer 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 or locations 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, and will provide the basis for the investigation and findings contemplated under section 13-13-05. At the time of making an 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 four hundred dollars for a license fee.

### **13-13-07. Financial condition.**

This section applies to large servicers as defined in subsection 9 of section 13-13-02.

1. A large servicer must maintain capital and liquidity in compliance with this section.
2. For the purposes of complying with the capital and liquidity requirements of this section, all financial data must be determined in accordance with generally accepted accounting principles.
3. A large servicer that meets the federal housing finance agency eligibility requirements for enterprise single-family seller or servicers for capital, net worth ratio, and liquidity, regardless of whether the servicer is approved for government-sponsored enterprises servicing, meets the requirements of subsections 1 and 2 of this section. Large servicers shall maintain written policies and procedures implementing the capital and servicing liquidity requirements of this section. Such policies and procedures must include a sustainable written methodology for satisfying the requirements of this subsection and be available to the commissioner upon request.
4. Large servicers shall maintain sufficient allowable assets for liquidity in addition to the amounts required for servicing liquidity to cover normal business operations. Large servicers shall have sound cash management and business operating plans that match the size and sophistication of the institution to ensure normal business operations. Management must develop, establish, and implement plans, policies, and procedures for maintaining operating liquidity sufficient for the ongoing needs of the institution. The plans, policies, and procedures must contain sustainable, written methodologies for maintaining sufficient operating liquidity and be available to the commissioner upon request.

### **13-13-08. Financial condition for applicant or licensee not subject to section 13-13-07.**

1. An applicant or licensee not subject to section 13-13-07 which is operating as an approved servicer by one or more government-sponsored enterprises must maintain liquidity to include operating reserves, and tangible net worth that meet the standards set by the entity. If approved by more than one entity, the applicant or licensee must meet the highest standard of the entities for which they are approved. Applicants or licensees with a combined portfolio are subject to this standard.
2. An applicant or licensee with a portfolio of loans not subject to any government-sponsored enterprises requirements must maintain liquidity to include operating reserves of 0.00035 times the unpaid principal balance of the portfolio and maintain a minimum tangible net worth as set forth in paragraph a of this subsection or, in lieu of the tangible net worth, maintain a one million dollar surety bond.

a. Minimum tangible net worth, based on nationwide portfolio:

0-199 loans                      \$100,000

200-299 loans                    \$200,000

<u>300-399 loans</u>	<u>\$300,000</u>
<u>400-499 loans</u>	<u>\$400,000</u>
<u>500-599 loans</u>	<u>\$500,000</u>
<u>600-699 loans</u>	<u>\$600,000</u>
<u>700-799 loans</u>	<u>\$700,000</u>
<u>800-899 loans</u>	<u>\$800,000</u>
<u>900-999 loans</u>	<u>\$900,000</u>
<u>1,000 plus loans</u>	<u>\$1,000,000</u>

- b. An applicant or licensee servicing North Dakota residential mortgage accounts may apply to the commissioner to waive or adjust one or more of these capital or liquidity requirements. In considering such a request, the commissioner will consider the number and types of loans being serviced and whether the licensee has a positive net worth and adequate operating reserves. For purposes of this section, "operating reserves" are funds set aside in anticipation of future payments or obligations and are included in liquidity.
- c. Licensees subject to this section must annually or more frequently report, as prescribed by the commissioner, on liquidity, including operating reserves, and tangible net worth.

### **13-13-09. Corporate governance.**

This section applies to large servicers as defined in section 13-13-02.

1. Large servicers shall establish and maintain a board of directors responsible for its oversight. For large servicers that are not approved to service loans by a government-sponsored enterprise, or where these federal agencies have granted approval for a board alternative, an institution may establish a similar body constituted to exercise oversight and fulfill the board of directors' responsibilities in subsection 2.
2. The board of directors shall be responsible for:
  - a. Establishing a written corporate governance framework, including appropriate internal controls designed to monitor corporate governance and assess compliance with the corporate governance framework.
  - b. Monitoring and ensuring institution compliance with the corporate governance framework and this chapter.
  - c. Reporting, accurately and timely, regulatory reports, including the requirements for filing the mortgage call report as required by section 13-13-23.
  - d. Establishing internal audit requirements that are appropriate for the size, complexity, and risk profile of the servicer, with appropriate independence

- to provide a reliable evaluation of the servicer's internal control structure, risk management, and governance.
3. Licensees subject to this section shall obtain an external opinion audit, including audited financial statements and audit reports conducted by an independent public accountant annually, including at a minimum:
    - a. Annual financial statements, including balance sheet, statement of operations or income statement, cashflows, notes, and supplemental schedules prepared in accordance with generally accepted accounting principles.
    - b. Assessment of the internal control structure.
    - c. Computation of tangible net worth.
    - d. Validation of mortgage servicing rights valuation and reserve methodology, if applicable.
    - e. Verification of adequate fidelity and errors and omissions insurance.
    - f. Testing of controls related to risk management activities, including compliance and stress testing, where applicable.
  4. Licensees subject to this section shall establish a risk management program under the oversight of the board of directors that identifies, measures, monitors, and controls risk sufficient for the level of sophistication of the servicer. The risk management program must:
    - a. Have appropriate processes and models in place to measure, monitor, and mitigate financial risk and changes to the risk profile of the servicer and assets being serviced.
    - b. Be scaled to the complexity of the organization, but be sufficiently robust to manage risks in several areas, including:
      - (1) Credit risk. The potential that a borrower or counterparty will fail to perform on an obligation.
      - (2) Liquidity risk. The potential that the servicer will be unable to meet its obligations as they come due because of an inability to liquidate assets or obtain adequate funding or that it cannot easily unwind or offset specific exposures.
      - (3) Operational risk. The risk resulting from inadequate or failed internal processes, people, and systems or from external events.
      - (4) Market risk. The risk to the servicer's condition resulting from adverse movements in market rates or prices.
      - (5) Compliance risk. The risk of regulatory sanctions, fines, penalties, or losses resulting from failure to comply with laws, rules, regulations, or other supervisory requirements applicable to the servicer.

- (6) Legal risk. The potential that actions against the institution that result in unenforceable contracts, lawsuits, legal sanctions, or adverse judgments can disrupt or otherwise negatively affect the operations or condition of the servicer.
- (7) Reputation risk. The risk to earnings and capital arising from negative publicity regarding the servicer's business practices.
5. Licensees subject to this section shall conduct a risk management assessment on an annual basis, concluding with a formal report to the board of directors. Evidence of risk management activities throughout the year must be maintained and made part of the report, including findings of issues and the response to address those findings.
6. Licensees subject to this section must maintain the audits, policies and procedures, and assessment results as part of their books and records available to the commissioner upon request.

### **13-13-10. Expiration and renewal of license.**

All licenses required under this chapter expire on December thirty-first of each year and may be renewed. Renewals are effective the succeeding January first. Applications for renewal must be submitted no later than thirty days before the expiration of the license and must be accompanied by the required annual renewal fee, which is not subject to refund. The renewal fee must equal five hundred dollars or two dollars and forty cents per one hundred thousand dollars of North Dakota mortgage loans serviced, whichever is greater. The renewal fee shall be based on the average mortgage loans serviced over the previous four quarters ending June thirtieth of the current year as reported on the mortgage call report. The renewal fee may not exceed one hundred thousand dollars. Fees must be paid to the department of financial institutions and be deposited in the financial institutions regulatory fund. 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 its license, the department of financial institutions may charge an additional fee of fifty dollars for the renewal of the license. A residential mortgage loan servicer 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 residential mortgage loan servicer 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 residential mortgage loan servicer license granted to the previous owner continues in effect to the new purchaser until the application is either granted or denied.

### **13-13-11. Powers of the department of financial institutions.**

The department of financial institutions has the power to:

1. Determine the qualifications of all applicants based on financial responsibility, financial condition, business experience, character, and general fitness which must reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly. In determining whether this qualification is met, and for the purpose of investigating compliance with the chapter, the commissioner may review and consider the relevant business records and capital adequacy of the applicant and the competence, experience, integrity,

and financial ability of a person who is a member, partner, director, officer, or twenty-five percent or more shareholder of the applicant.

2. Establish codes of ethical conduct for licensees.
3. The commissioner may:
  - a. Order or direct the licensee subject to this chapter to satisfy additional conditions necessary to ensure that the institution will continue to operate in a safe and sound manner and be able to continue to service loans in compliance with state and federal law or regulation where risk to the institution or borrower is extremely high, as determined by a formal review.
  - b. Provide notice that all or part of this chapter is not applicable to an institution where risk to the institution is extremely low, as determined by a formal review.
  - c. Provide public notice of a temporary suspension of all or certain sections of this chapter where economic, environmental, or societal events are determined to be of such severity to warrant a temporary suspension.

### **13-13-12. Manner in which records to be kept.**

Every residential mortgage loan servicer licensed under this chapter shall keep a record of all sums collected and all loans serviced by the residential mortgage loan servicer for a period of six years from the date of last entry. If the records can be reproduced upon request by the department of financial institutions within the required statutory time period provided in this section, the records of a licensee may be maintained electronically. When a licensee ceases operations for any reason, the licensee shall inform the department of the location of the records. In addition, the licensee shall provide the name of the individual responsible for maintenance of the records. The licensee shall notify the department within ten business days of the change of the location of the records or the change of the individual responsible for maintenance of the records.

### **13-13-13. Revocation of license - Suspension of license - Surrender of license.**

1. The commissioner may issue upon any licensee an order suspending or revoking a licensee's license if the commissioner finds that:
  - a. The licensee has failed to pay the annual license fee under this chapter or any examination fee imposed by the commissioner under the authority of this chapter.
  - b. The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this chapter or any regulation or order lawfully made pursuant to and within the authority of this chapter.
  - c. Any fact or condition existing at the time of the original application for such license which clearly would have warranted the department of financial institutions in refusing originally to issue such license.
  - d. The licensee has failed to maintain the required bond.

- e. The licensee has failed to maintain registration with the secretary of state if so required.
2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If a hearing is not requested within twenty days of the date the order is served upon the licensee, the order is final. If a hearing is held and the commissioner finds that the record warrants, the commissioner may enter a final order. The final order is final suspending or revoking the license.
4. If the commissioner finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of the license pending investigation, it may, upon issuance, enter an order suspending the license pending the holding of a hearing as prescribed in this chapter.
5. Any licensee may surrender its license, but surrender does not affect the licensee's civil or criminal liability for acts committed before the surrender.

**13-13-14. Suspension and removal of residential mortgage loan servicer officers and employees.**

1. The commissioner of financial institutions may issue upon a current or former residential mortgage loan servicer officer or employee and upon the licensee involved an order stating:
  - a. The current or former officer or employee is engaging or has engaged in any of the following conduct:
    - (1) Violating a law, rule, order, or written agreement with the commissioner.
    - (2) Engaging in harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving servicing activity.
    - (3) Performing an act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.
  - b. The term of the suspension or removal from employment and participation within the conduct or the affairs of a residential mortgage loan servicer.
2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If a hearing is not requested within twenty days of the date the order is served, the order is final. If a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter a final order. The final order suspending or removing the current or former employee is final. The current or former officer or employee may request a termination of the final order after a period of no less than three years.
4. A contested or default suspension or removal order is effective immediately upon issuance on the current or former officer or employee and upon the licensee. A consent order is effective as agreed. Any current or former officer

or employee suspended or removed from employment and participation within the conduct or the affairs of a residential mortgage loan servicer pursuant to this section is not eligible, while under suspension or removal, to be employed or otherwise participate in the affairs of any financial corporation, financial institution, credit union, or any other entity licensed by the department of financial institutions.

5. When any current or former officer or employee, or other person participating in the conduct of the affairs of a licensee is charged with a felony in state or federal court which involves dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from further participation in the affairs of any entity licensed or chartered by the department. The order is effective upon issuance and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial diversion, conviction or agreement to plea to lesser charges, or similar state order or judgment is entered, the suspension or prohibition is permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner from pursuing administrative or civil remedies.

### **13-13-15. Prohibited acts and practices.**

It is a violation of this chapter for a person subject to this chapter to:

1. Make or cause to be made any materially false statement or representation in any document or statement required to be filed under any provision of this chapter, or to omit any material statement or fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.
2. Directly or indirectly, employ any device, scheme, or artifice to defraud or mislead borrowers or lenders to defraud any person.
3. Directly or indirectly, make any untrue statement of a material fact or to omit a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading in connection with the procurement or promise of procurement of any lender or loan funds.
4. Engage in any unfair or deceptive practice toward any person.
5. Obtain property by fraud or misrepresentation.
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 adopted under this chapter or fail to comply with any other state or federal law, including the rules and regulations, applicable to any business authorized or conducted under this chapter.
9. Negligently make any false statement or make any omission of material fact in connection with any information or reports filed with a governmental agency.

the nationwide multistate licensing system and registry, or in connection with any investigation conducted by the commissioner or another governmental agency.

10. Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter.
11. 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.
12. Fail to truthfully account for moneys belonging to a party to a loan transaction.
13. Conduct another business within the same office, suite, room, or place of business at which the licensee engages in residential mortgage loan servicer business unless the commissioner provides written authorization after a determination the other business is not contrary to the best interests of any borrower.
14. Enter any agreement that constitutes a precomputed loan.

### **13-13-16. Orders and injunctions.**

Whenever it appears to the department of financial institutions either upon complaint or otherwise, that any person has engaged in, is engaging in, or is about to engage in any act or practice or transaction which is prohibited by this chapter, or by any order of the department issued pursuant to any section of this chapter or which is declared to be illegal in this chapter, the department may, in its discretion:

1. Issue an order that is effective upon issuance, including cease and desist, stop, and suspension orders, which it deems necessary or appropriate in the public interest or for the protection of the public. Any person aggrieved by an order issued pursuant to this subsection may request a hearing before the department if the request is made within ten days after receipt of the order. The hearing must be held in accordance with chapter 28-32 as must any appeal.
2. Apply to the district court of Burleigh County for an injunction restraining a person and the agents, employees, partners, officers, and directors of the person from continuing the act, practice, or transaction of engaging or doing any acts in furtherance of, and for other and further relief as the facts may warrant. In any proceeding for an injunction, the department may apply for and on due showing be entitled to have issued the court's subpoena requiring the appearance of any defendants and their agents, employees, partners, officers, or directors, and the production of documents, books, and records as may appear necessary for the hearing upon the petition for an injunction. Upon proof of any of the offenses described in this section, the court may grant an injunction as the facts may warrant. The court may not require the department to post a bond.

### **13-13-17. Investigations, subpoenas, and examination authority.**

In addition to any authority allowed under this chapter, the commissioner may conduct investigations and examinations as follows:

1. The department of financial institutions may:

- a. Make a public or private investigation or examination within or outside this state as it deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order, or to aid in the enforcement of this chapter or in the prescribing of rules and forms. The licensee shall pay an investigation or examination fee and must be charged by the department of financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the visitation provided for by this section. Fees must be deposited in the financial institutions regulatory fund.
  - b. Require or permit any person to file a statement in writing, under oath or otherwise as the department determines, as to all the facts and circumstances concerning the matter to be investigated or examined.
  - c. Publish information concerning any violation of this chapter or any rule or order.
2. For the purpose of any investigation, examination, or proceeding under this chapter, the department of financial institutions may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the department deems relevant or material to the inquiry.
  3. The district court, upon application by the department of financial institutions, may issue an order requiring a witness to appear before the department, to produce documentary evidence if so ordered or to give evidence touching the matter in question under investigation or examination. Failure to obey the order of the court may be punished by the court as a contempt of court.
  4. No person is excused from attending and testifying or from producing any document or record before the department of financial institutions, or in obedience to the subpoena of the department, or in any proceeding instituted by the department, on the grounds that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty forfeiture, but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after claiming the privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.
  5. 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 [15 U.S.C. section 1681 et seq.]; 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.
  6. For purposes of investigating violations or complaints arising under this chapter, or for purposes of examination, the commissioner may review, investigate, or examine any licensee or person subject to this chapter, as often as necessary in order to carry out the purposes of this chapter.
  7. Each licensee or person subject to this chapter shall make available to the commissioner upon request the books and records relating to the operations of the licensee or person subject to this chapter. The commissioner shall have access to the books and records and interview the officers, principals, employees, independent contractors, agents, and customers of the licensee or person subject to this chapter concerning their business.
  8. Each licensee 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. Other information deemed necessary to carry out the purposes of this section.
  9. In making any investigation or examination authorized by this chapter, the commissioner may control access to any documents and records of the licensee or person under investigation or examination. 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, a person may not 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 may have access to the documents or records as necessary to conduct its ordinary business affairs.
  10. In order to carry out the purposes of this section, the commissioner may:
    - a. Retain 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; and
  - e. Accept audit reports made by an independent certified public accountant for the licensee 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.
11. The authority of this section remains in effect, whether such a licensee 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 authority.
12. A licensee or person subject to investigation or examination under this section may not knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

### **13-13-18. Response to department requests.**

An applicant, licensee, or other person subject to the provisions of this chapter shall comply with requests for information, documents, or other requests from the department of financial institutions within the time specified in the request, which must be a minimum of ten days, or, if no time is specified, within thirty days of the mailing of the request by the department of financial institutions. If the request for information is in regard to a new application or renewal of an existing application and is not received within the time specified in the request, or within thirty days of the mailing of the request, the department may deny the application.

### **13-13-19. Remedies not exclusive.**

The remedies provided for in this chapter are in addition to and not exclusive of any other remedies provided by law.

### **13-13-20. 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 against any person who violates a law, rule, written agreement, or order under this chapter. The commissioner may not impose a civil money penalty in excess of one hundred thousand dollars for each occurrence and one thousand dollars per day for each day that the violation continues after issuance of an order. 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 deposited in the financial institutions regulatory fund.

### **13-13-21. 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, chapter 44-04, or section 6-01-07.1, regarding the privacy or confidentiality of any information or material provided to the nationwide multistate 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 information or material, continue to apply to information or material after the information or material has been disclosed to the nationwide multistate licensing system and registry. 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, chapter 44-04, or section 6-01-07.1.
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.
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 administrative process, unless with respect to any privilege held by the nationwide multistate licensing system and registry with respect to such information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.
4. The commissioner shall take all necessary steps, under any applicable law or rule, to protect the disclosure of information or material that is subject to a privilege or confidentiality under subsection 1. Records subject to a privilege or confidentiality under subsection 1 may be required to be disclosed only pursuant to an order of the court. The court ordering the disclosure shall issue a protective order to protect the confidential nature of the records.
5. Application of chapter 44-04 or section 6-01-07.1, relating to the disclosure of confidential supervisory information or any information or material described in subsection 1 which is inconsistent with subsection 1, is superseded by the requirements of this section.

### **13-13-22. Change of name or address.**

A licensee is required to submit within twenty business days of the date of change notification of a change of name or change of address. The notification must be in the form prescribed by the commissioner.

### **13-13-23. Call reports.**

Each licensee shall submit to the nationwide multistate licensing system and registry reports of condition which must be in the prescribed form and must contain

the information as the nationwide multistate licensing system and registry may require. Failure to accurately report information required by this section is deemed to be a violation of subsection 1 of section 13-13-15.

**13-13-24. Report to nationwide multistate licensing system.**

Notwithstanding state privacy law, the commissioner shall regularly report violations of this chapter, as well as enforcement actions and other relevant information, to the nationwide multistate licensing system and registry subject to the provisions contained in section 13-12-15.

**13-13-25. Disclosure of customer information.**

Except for provisions of chapter 6-08.1 which are inconsistent with this chapter, chapter 6-08.1 applies to all residential mortgage loan servicers licensed under this chapter.

**SECTION 2. APPROPRIATION - DEPARTMENT OF FINANCIAL INSTITUTIONS - AUTHORIZATION - FULL-TIME EQUIVALENT POSITION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from licensing and examination fees, to the department of financial institutions for the purpose of administering and enforcing laws, rules, and regulations relating to residential mortgage loan servicers, for the biennium beginning July 1, 2023, and ending June 30, 2025.

Salaries and wages	\$200,000
Operating expenses	<u>25,000</u>
Total special funds	\$225,000
Full-time equivalent positions	1.00

Approved April 11, 2023

Filed April 12, 2023

# DOMESTIC RELATIONS AND PERSONS

## CHAPTER 140

### HOUSE BILL NO. 1533

(Representatives Boschee, Hanson, Ista, Klemin, Pyle, Roers Jones, Schneider)  
(Senator Braunberger)

AN ACT to create and enact a new chapter to title 14 of the North Dakota Century Code, relating to protecting survivors of domestic abuse from abusive litigation.

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

**SECTION 1.** A new chapter to title 14 of the North Dakota Century Code is created and enacted as follows:

##### Definitions.

1. "Abusive litigation" means litigation in which:
  - a. The parties have or had an intimate partner relationship or any other person with a sufficient relationship to the abusing person as determined by the court under section 14-07.1-02;
  - b. The filing party has been found by a court to have committed an act of domestic violence or disorderly conduct against the opposing party pursuant to a court order entered under chapter 14-07.1, 14-09, or 12.1-32.2, or an equivalent ordinance from another state, provided the issuing court made a specific finding of domestic violence or disorderly conduct, or the filing party has a prior conviction relating to domestic violence against the opposing party under chapter 12.1-17;
  - c. There is intent on the part of the filing party to harass, intimidate, maintain contact with, or retaliate against the opposing party; and
  - d. At least one of the following is true:
    - (1) Claims, allegations, and other legal contentions made in the litigation are not warranted by existing law or by a reasonable argument for the extension, modification, or reversal of existing law, or the establishment of new law;
    - (2) Allegations and other factual contentions made in the litigation lack evidentiary support;
    - (3) The actions comprising the basis of the litigation previously have been filed or litigated in one or more other courts or jurisdictions and have been disposed of unfavorably against the party filing, initiating, advancing, or continuing the litigation; or

- (4) The filing party has been sanctioned previously for filing, initiating, advancing, or continuing litigation found to be frivolous, vexatious, intransigent, or brought in bad faith.
2. "Filing party" means the party who has filed, initiated, advanced, or continued litigation.
  3. "Intimate partner" means a spouse, former spouse, an individual who has a child with a filing party regardless of whether the individual has been married to the filing party or lived with the filing party, or an individual who has or had a dating relationship with the filing party.
  4. "Litigation" means any motion, pleading, petition, or other court filing.
  5. "Opposing party" means the party against whom the filing party has filed, initiated, advanced, or continued litigation.

**Burden of proof - Dismissal - Entry of order restricting abusive litigation.**

1. If a court finds by a preponderance of the evidence any of the litigation pending before the court constitutes abusive litigation, the court shall dispose of the litigation with prejudice.
2. If the court finds abusive litigation, the court shall enter an order restricting abusive litigation. The order must:
  - a. Impose all costs of the abusive litigation against the filing party; and
  - b. Award the opposing party reasonable attorney's fees and costs associated with responding to the abusive litigation, including the cost of seeking the order restricting abusive litigation.

**Proceeding when abusive litigation is not present.**

If the court finds by a preponderance of the evidence any of the litigation pending before the court does not constitute abusive litigation, the court shall enter written findings to that effect and the portions of the litigation found not to be abusive may proceed.

**Rules - Authority.**

The supreme court may adopt rules to implement this chapter.

Approved March 22, 2023

Filed March 23, 2023

## CHAPTER 141

### HOUSE BILL NO. 1136

(Representatives Klemin, Karls, Meier, D. Ruby, Satrom, Steiner, Vetter)  
(Senators Dwyer, Erbele, Kannianen, Larson, Luick)

AN ACT to create and enact a new section to chapter 14-02.4 of the North Dakota Century Code, relating to the exercise of religion.

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

**SECTION 1.** A new section to chapter 14-02.4 of the North Dakota Century Code is created and enacted as follows:

##### **Exercise of religion.**

1. Notwithstanding any other provision of law, a state or local government entity may not:
  - a. Substantially burden a person's exercise of religion unless applying the burden to that person's exercise of religion in a particular situation is essential to further a compelling governmental interest and is the least restrictive means of furthering that compelling government interest;
  - b. Treat religious conduct more restrictively than any secular conduct of reasonably comparable risk; or
  - c. Treat religious conduct more restrictively than any comparable secular conduct because of alleged economic need or benefit.
2. A person claiming to be aggrieved by a violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief, including costs and reasonable attorney's fees.

Approved March 30, 2023

Filed April 3, 2023

## CHAPTER 142

### HOUSE BILL NO. 1450

(Representatives Roers Jones, Cory, Dakane, McLeod, Meier, O'Brien, Schneider,  
Strinden, VanWinkle)  
(Senators Myrdal, K. Roers)

AN ACT to amend and reenact subsection 2 of section 14-02.4-03 of the North Dakota Century Code, relating to the definition of pregnancy in our discrimination laws.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 14-02.4-03 of the North Dakota Century Code is amended and reenacted as follows:

2. It is a discriminatory practice for an employer to fail or refuse to make reasonable accommodations for an otherwise qualified individual with a physical or mental disability, because that individual is pregnant, or because of that individual's religion. An employer is not required to provide an accommodation that would disrupt or interfere with the employer's normal business operations; threaten an individual's health or safety; contradict a business necessity of the employer; or impose an undue hardship on the employer, taking into consideration the size of the employer's business, the type of business, the financial resources of the employer, and the estimated cost and extent of the accommodation. For purposes of this subsection, "pregnant" includes pregnancy, childbirth, and related medical conditions.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 143

### HOUSE BILL NO. 1037

(Legislative Management)  
(Judiciary Committee)

AN ACT to amend and reenact section 14-05-24.1 of the North Dakota Century Code, relating to spousal support; and to provide for application.

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

**SECTION 1. AMENDMENT.** Section 14-05-24.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **14-05-24.1. Spousal support.**

1. As used in this section:
  - a. "Length of marriage" means from the date of the marriage until the service of a summons for an action for legal separation or divorce.
  - b. "Material change in circumstances" means a change that substantially affects the financial abilities or needs of the parties and which was not contemplated by the parties at the time of the original award.
2. ~~Taking into consideration the circumstances of the parties, the~~The court may not award permanent spousal support. Upon consideration of the provisions of this section, the court may require one party to pay spousal support to the other party for a limited period of time in accordance with this section upon expressly finding:
  - a. The recipient lacks sufficient property or income or the property or income is insufficient to enable the recipient to provide for the recipient's reasonable needs, considering the marital standard of living; and
  - b. The payor has the ability to supply those means without undue economic hardship. The court may modify its spousal support orders.
3. In addition to any other factors the court considers relevant in determining the amount and duration of spousal support, the court shall consider:
  - a. The age of the parties;
  - b. The earning ability of each party;
  - c. The duration of the marriage;
  - d. The conduct of the parties during the marriage;
  - e. The station in life of each party;
  - f. The circumstances and necessities of each party;

- g. The health and physical condition of each party; and
- h. The financial circumstances of the parties as shown by the property owned at the time of the divorce, including the value of the property at the time of the divorce, the income-producing capacity of the property, and whether the property was acquired before or after the marriage.
4. After considering the factors in subsection 3, the court may award:
- a. Rehabilitative spousal support when it is possible to restore a spouse to independent economic status or to equitably divide the burden of the divorce by increasing that spouse's earning capacity.
- b. General term spousal support when a spouse is not capable of rehabilitation, self-support, or to minimize the burden of the divorce.
- c. Lump sum spousal support as additional marital property to a spouse or the court may otherwise adjust the distribution of the marital property and debt to eliminate the need for spousal support or to reduce the amount or the duration of the spousal support.
5. Except upon written findings by the court which require a deviation beyond the time limits of this section is necessary, spousal support terminates upon the following:

<u>Length of marriage</u>	<u>Duration of spousal support award as percentage of the number of months of the length of the marriage</u>
<u>Less than 5 years</u>	<u>Up to 50%</u>
<u>Between 5 and 10 years</u>	<u>Up to 60%</u>
<u>Between 10 and 15 years</u>	<u>Up to 70%</u>
<u>Between 15 and 20 years</u>	<u>Up to 80%</u>
<u>20 years or more</u>	<u>Duration agreed upon by parties or for a limited time as determined by the court.</u>

6. The court may modify its spousal support order, subject to the following limitations:
- a. If a material change in circumstances occurs during the rehabilitative period, rehabilitative spousal support may be modified.
- b. If a material change in circumstances occurs, general term spousal support may be modified.
7. Upon the filing of a judgment, the parties may not seek and the court may not order a modification of lump sum spousal support.

8. The parties may expressly preclude or limit the modification of spousal support through a written agreement that is part of the judgment for divorce.
9. Unless otherwise agreed to by the parties in writing, spousal support is terminated upon the remarriage or death of the spouse receiving support. The court may require reasonable security from the payor spouse in the event of the payor's death. Immediately upon remarriage, the spouse receiving support shall provide notice of the remarriage to the payor spouse at the last known address of the payor spouse.
- 3-10. Unless otherwise agreed to by the parties in writing, upon an order of the court based upon a preponderance of the evidence that the spouse receiving support has been habitually cohabiting with another individual in a relationship analogous to a marriage for one year or more, the court shall terminate spousal support.
4. Subsections 2 and 3 do not apply to rehabilitative spousal support.
11. There is a rebuttable presumption that spousal support terminates upon the payor's attaining full retirement age for social security purposes. The rebuttable presumption may be overcome if the court determines spousal support should continue based on the following factors:
  - a. The ages of the parties at the time of the marriage, the time of the entry of the spousal support award, and the time of the application for retirement;
  - b. The degree and duration of the economic dependency of the recipient upon the payor during the marriage;
  - c. Whether the recipient has foregone, relinquished, or otherwise sacrificed claims, rights, or property in exchange for a more substantial or longer spousal support award;
  - d. The duration or amount of spousal support already paid;
  - e. The health of the parties at the time of the retirement application;
  - f. Assets of the parties at the time of the retirement application;
  - g. Sources of income, both earned and unearned, of the parties, including whether the payor spouse intends to continue employment;
  - h. The ability of the recipient to have saved adequately for retirement; and
  - i. Any other factors the court deems relevant.

**SECTION 2. APPLICATION.** It is the intent of the sixty-eighth legislative assembly that this Act becomes effective on August 1, 2023, and applies to actions for divorce or legal separation filed on or after August 1, 2023.

Approved March 30, 2023

Filed April 3, 2023

## CHAPTER 144

### HOUSE BILL NO. 1268

(Representatives Ista, Cory, Hanson, Heinert, Klemin, M. Ruby, Schneider, Vetter)  
(Senators Braunberger, Larson, Lee, Sickler)

AN ACT to create and enact a new subsection to section 14-07.1-02 of the North Dakota Century Code, relating to the definition of domestic violence and stalking; to amend and reenact subsection 3 of section 14-07.1-02 of the North Dakota Century Code, relating to domestic violence protection orders; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 14-07.1-02 of the North Dakota Century Code is amended and reenacted as follows:

3. Service must be made upon the respondent at least five days ~~prior to~~before the hearing. Service of the hearing notice, for a protection order under this section or for an ex parte temporary protection order under section 14-07.1-03, must be attempted by personal service before service by publication under rule 4 of the North Dakota Rules of Civil Procedure may be attempted. If service cannot be made, or if additional time is required to complete service by publication, the court may set a new date.

**SECTION 2.** A new subsection to section 14-07.1-02 of the North Dakota Century Code is created and enacted as follows:

As used in this section and in section 14-07.1-03:

- a. "Domestic violence" has the meaning provided in section 14-07.1-01 and includes stalking.
- b. "Stalking" has the meaning provided for in the term "stalk" in section 12.1-17-07.1.

Approved April 7, 2023

Filed April 10, 2023

## CHAPTER 145

### HOUSE BILL NO. 1362

(Representatives Christensen, Bosch, Heilman, Kasper, Koppelman, Lefor, Meier, M. Ruby)  
(Senators Boehm, Larsen, Paulson, Wobbema)

AN ACT to create and enact a new section to chapter 14-09 of the North Dakota Century Code, relating to recognizing a parent's interest in their child's upbringing.

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

**SECTION 1.** A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

#### **Parent's interest in child's upbringing.**

1. As used in this section, a "parent" means parent or legal guardian not including a school or other institution serving in loco parentis.
2. It is the public policy of the state that:
  - a. A parent retains the right and duty to exercise primary control over the care, supervision, upbringing, and education of the parent's child;
  - b. A child has the right to protection from abuse and neglect; and
  - c. The state retains a compelling interest in preventing, assessing, investigating, addressing, and prosecuting abuse and neglect.
3. This section may not be interpreted to supersede chapters 27-20.1, 27-20.2, 27-20.3, and 27-20.4.

Approved May 6, 2023

Filed May 9, 2023

## CHAPTER 146

### HOUSE BILL NO. 1113

(Judiciary Committee)  
(At the request of the Supreme Court)

AN ACT to amend and reenact sections 14-09-06.3 and 14-09-06.4 of the North Dakota Century Code, relating to parenting investigators and guardians ad litem.

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

**SECTION 1. AMENDMENT.** Section 14-09-06.3 of the North Dakota Century Code is amended and reenacted as follows:

#### **14-09-06.3. CustodyParenting investigations and reports - Costs.**

1. In contested proceedings dealing with parental rights and responsibilities the court, upon the request of either party, or, upon its own motion, may appoint a parenting investigator and order an investigation and report concerning 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 human service zone, public health officer, school officials, and any other public agency or private practitioner the court deems qualified to make the investigation. The supreme court shall adopt rules establishing the minimum qualifications of a parenting investigator and maintain and make available to the public a roster of individuals eligible to serve as a parenting investigator. The roster must include each individual's name, address, and telephone number. The parenting investigator appointed must be on the public roster of those eligible to serve as a parenting investigator.
2. The investigator may consult any person who may have information about the child and any potential 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~~ parenting investigator shall mail ~~file~~ the investigator's report to ~~with the court and serve the report on~~ 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 court shall enter an order stating the expenses of any such investigation 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.~~

5. Following the decision by the court regarding parenting rights and responsibilities, the parenting investigator must be discharged of the investigator's duties as investigator.
6. A parenting 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 parenting investigator is a disputable presumption.

**SECTION 2. AMENDMENT.** Section 14-09-06.4 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-06.4. Appointment of attorney guardian ad litem ~~or investigator~~ for child in proceedings involving parental rights and responsibilities - Immunity.**

1. 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 child, and in any action when the parenting rights and responsibilities concerning the child is contested, ~~either party to the action may petition the court for the appointment of a~~ the court, upon motion of the court or by motion or agreement of the parties, may appoint an attorney guardian ad litem to represent the child concerning parenting rights and responsibilities. The court may appoint a guardian ad litem or investigator on its own motion.
2. If appointed, ~~an~~ an attorney guardian ad litem shall serve as an advocate of the child's best interests. ~~If appointed, the investigator shall provide those services as prescribed by the supreme court.~~
3. The court may direct either or both parties to pay the attorney guardian ad litem ~~or 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 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~~
4. An attorney guardian ad litem ~~or 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 attorney guardian ad litem ~~or investigator~~ is a disputable presumption.

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 147

### HOUSE BILL NO. 1492

(Representatives Ista, Cory, Mitskog, Mock, O'Brien, Roers Jones, M. Ruby, Schauer, Schneider)  
(Senators Hogan, Kreun, Lee)

AN ACT to amend and reenact section 14-09-22 of the North Dakota Century Code, relating to defining mental injury for the crime of child abuse; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 14-09-22 of the North Dakota Century Code is amended and reenacted as follows:

##### **14-09-22. Abuse of child - Mandatory sentence - Penalty.**

1. Except as provided in subsection 2 or 3, a parent, adult family or household member, guardian, or other custodian of any child, who willfully inflicts or allows to be inflicted upon the child mental injury or bodily injury, substantial bodily injury, or serious bodily injury as defined by section 12.1-01-04 is guilty of a class C felony except if the victim of an offense under this section is under the age of six years in which case the offense is a class B felony. For purposes of this subsection, "mental injury" means an observable and substantial, nontransitory impairment to a child's mental or psychological ability to function within a normal range of performance or behavior.
2. A person who provides care, supervision, education, or guidance for a child unaccompanied by the child's parent, adult family or household member, guardian, or custodian in exchange for money, goods, or other services and who while providing such services commits an offense under this section is guilty of a class B felony. Any such person who commits, allows to be committed, or conspires to commit, against the child, a sex offense as defined in chapter 12.1-20 is subject to the penalties provided in that chapter.
3. A person who commits an offense under this section is guilty of a class B felony if the victim suffers permanent loss or impairment of the function of a bodily member or organ, except if the victim of the offense is under the age of six years in which case the offense is a class A felony.
4. A person who has pled guilty or nolo contendere to, or has been found guilty of an offense under this section must be sentenced to a minimum of one year imprisonment.
5. For any person who pleads guilty or is convicted of an offense under this section, the court shall include in the sentence an order for the person to complete a parental capacity evaluation, mental health evaluation, and anger management assessment, and to complete treatment recommendations as ordered by the court as a condition of probation.

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 148

### SENATE BILL NO. 2080

(Human Services Committee)

(At the request of the Department of Health and Human Services)

AN ACT to amend and reenact subsections 2, 4, and 5 of section 14-15-11 and section 27-20.3-24 of the North Dakota Century Code, relating to a licensed child-placing agency investigation and adoptive child placement; to provide a statement of legislative intent; to provide for a legislative management study; to provide for a legislative management report; to provide a contingent effective date; to provide an effective date; and to declare an emergency.

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

<sup>84</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 14-15-11 of the North Dakota Century Code is amended and reenacted as follows:

2. An investigation must be made by a licensed child-placing agency to inquire into the conditions and antecedents of a minor sought to be adopted and of the petitioner for the purpose of ascertaining whether ~~the adoptive home is a suitable home for the minor and whether the:~~
  - a. The proposed adoption is in the best interest of the minor; and
  - b. The adoptive home is suitable for the minor. The licensed child-placing agency shall obtain and consider the foster care assessment of an applicant who is also a licensed, certified, or approved family foster home for children in the manner prescribed by the department. An adoptive home is presumed suitable if, in the manner prescribed by the department, the petitioner is continuously licensed, certified, or approved as a family foster home for children under chapter 50-11 to furnish foster care for children for more than one year without a correction order, fiscal sanction, or license revocation proceeding, unless the custodial agency reasonably believes the use of the foster care assessment or the licensed, certified, or approved family foster home for children is not in the best interest of the minor.

<sup>85</sup> **SECTION 2. AMENDMENT.** Subsection 4 of section 14-15-11 of the North Dakota Century Code is amended and reenacted as follows:

4. The report of the investigation must contain a:
  - a. A review of the child's history; a

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<sup>84</sup> Section 14-15-11 was also amended by section 2 of Senate Bill No. 2080, chapter 148, and section 3 of Senate Bill No. 2080, chapter 148.

<sup>85</sup> Section 14-15-11 was also amended by section 1 of Senate Bill No. 2080, chapter 148, and section 3 of Senate Bill No. 2080, chapter 148.

- b. A preplacement adoption assessment of the petitioner, including a criminal history record investigation of the petitioner; ~~and a~~
- c. A postplacement evaluation of the placement with a recommendation as to the granting of the petition for adoption;
- d. The petitioner's foster care assessment to demonstrate the presumed suitability of the adoptive home if a foster care assessment was considered in the investigation under subsection 2 of this section; and any
- e. Any other information the court requires regarding the petitioner or the minor.

<sup>86</sup> **SECTION 3. AMENDMENT.** Subsection 5 of section 14-15-11 of the North Dakota Century Code is amended and reenacted as follows:

- 5. An investigation and report is not required in cases in which a stepparent is the petitioner or the individual to be adopted is an adult. The department and human service zone, when required to consent to the adoption, may give consent without making the investigation. If the petitioner is a court-appointed legal guardian or a relative other than a stepparent of the minor, the minor has lived with the petitioner for at least nine months, no allegations of abuse or neglect have been filed against the petitioner or any member of the petitioner's household, and the court is satisfied that the proposed adoptive home is appropriate for the minor, the court may waive the investigation and report required under this section.

**SECTION 4. AMENDMENT.** Section 27-20.3-24 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.3-24. Disposition upon termination of parental rights.**

- 1. If, upon entering an order terminating the parental rights of a parent, there is no parent having parental rights, the court shall:
  - a. Commit the child to the custody of the human service zone director or a licensed child-placing agency willing to accept custody for the purpose of placing the child for adoption or, in the absence of such an agreement, in a foster home;
  - b. Appoint a fit and willing relative or other appropriate individual as the child's legal guardian; or
  - c. Establish some other planned permanent living arrangement.
- 2. The custodian has the rights of a legal custodian and authority to consent to the child's adoption, marriage, enlistment in the armed forces of the United States, and surgical and other medical treatment.
- 3. If the child is not placed for adoption within twelve months after the date of the order and a legal guardianship or other planned permanent living arrangement for the child has not been established by a court of competent jurisdiction, the

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<sup>86</sup> Section 14-15-11 was also amended by section 1 of Senate Bill No. 2080, chapter 148, and section 2 of Senate Bill No. 2080, chapter 148.

child must be returned to the court issuing the original termination order for entry of further orders for the care, custody, and control of the child.

4. Unless sections 27-20.2-15 and 27-20.3-19 or the federal Indian Child Welfare Act of 1978 [25 U.S.C. 1901 et seq.] applies, and if after conducting a diligent and exhaustive search, a fit and willing relative interested in adoption is not located, a human service zone director or licensed child-placing agency that places a child for adoption under subdivision a of subsection 1, shall consider granting the adoptive placement to a licensed, certified, or approved family foster home for children provider interested in adopting the child, if the licensed, certified, or approved family foster home for children provider provided foster care to the child:
  - a. For one year or longer leading up to the termination of parental rights; and
  - b. Without a correction order, fiscal sanction, or license revocation proceeding.
5. Subsection 4 does not apply if considering the adoptive placement to the licensed, certified, or approved family foster home for children provider would result in siblings who are placed for adoption being placed in separate homes.

**SECTION 5. AMENDMENT.** Section 27-20.3-24 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.3-24. Disposition upon termination of parental rights.**

1. If, upon entering an order terminating the parental rights of a parent, there is no parent having parental rights, the court shall:
  - a. Commit the child to the custody of the human service zone director or a licensed child-placing agency willing to accept custody for the purpose of placing the child for adoption or, in the absence of such an agreement, in a foster home;
  - b. Appoint a fit and willing relative or other appropriate individual as the child's legal guardian; or
  - c. Establish some other planned permanent living arrangement.
2. The custodian has the rights of a legal custodian and authority to consent to the child's adoption, marriage, enlistment in the armed forces of the United States, and surgical and other medical treatment.
3. If the child is not placed for adoption within twelve months after the date of the order and a legal guardianship or other planned permanent living arrangement for the child has not been established by a court of competent jurisdiction, the child must be returned to the court issuing the original termination order for entry of further orders for the care, custody, and control of the child.
4. Unless chapter 27-19.1 or the federal Indian Child Welfare Act of 1978 [25 U.S.C. 1901 et seq.] applies, and if after conducting a diligent and exhaustive search, a fit and willing relative interested in adoption is not located, a human service zone director or licensed child-placing agency that places a child for adoption under subdivision a of subsection 1, shall consider granting the adoptive placement to a licensed, certified, or approved family

foster home for children provider interested in adopting the child, if the licensed, certified, or approved family foster home for children provider provided foster care to the child:

- a. For one year or longer leading up to the termination of parental rights; and
  - b. Without a correction order, fiscal sanction, or license revocation proceeding.
5. Subsection 4 does not apply if considering the adoptive placement to the licensed, certified, or approved family foster home for children provider would result in siblings who are placed for adoption being placed in separate homes.

## **SECTION 6. LEGISLATIVE MANAGEMENT STUDY - CHILD WELFARE ISSUES.**

1. During the 2023-24 interim, the legislative management shall consider studying the laws and practices of the child welfare system. The study must include a review of the:
  - a. Implementation of the revisions in juvenile court procedures and the new model of practice;
  - b. Laws, administrative rules, and practices of the foster care and adoption systems;
  - c. The timeliness of termination of parental rights;
  - d. Timeliness of permanency; and
  - e. Availability of resources to support children and families experiencing out-of-home placement or risk of out-of-home placement.
2. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 7. LEGISLATIVE INTENT - CHILD WELFARE ISSUES - LEGISLATIVE MANAGEMENT REPORT.** It is the intent of the sixty-eighth legislative assembly that the department of health and human services conduct a foster care and adoption child welfare redesign. The redesign must include a review of methods to streamline adoptions by licensed, certified, or approved family foster home for children providers and identify a fit and willing relative interested in adoption earlier in the process. The department shall report its findings and recommendations to the legislative management by January 1, 2024, and every six months after the initial report during the 2023-25 biennium.

**SECTION 8. CONTINGENT EFFECTIVE DATE.** Section 5 of this Act becomes effective on October 1, 2024, if chapter 27-19.1 as created by section 1 of House Bill No. 1536 is approved by the sixty-eighth legislative assembly.

**SECTION 9. EFFECTIVE DATE.** Sections 1, 2, and 4 become effective on October 1, 2024.

**SECTION 10. EMERGENCY.** Section 3 of this Act is declared to be an emergency measure.

Approved May 8, 2023

Filed May 9, 2023

# EDUCATION

## CHAPTER 149

### SENATE BILL NO. 2049

(State and Local Government Committee)  
(At the request of the Department of Trust Lands)

AN ACT to amend and reenact sections 15-04-09, 15-04-19, 15-08-19.1, and 15-08-19.4 of the North Dakota Century Code, relating to the leasing and administration of lands managed by the board of university and school lands; and to repeal section 15-04-18 of the North Dakota Century Code, relating to the leasing and administration of lands managed by the board of university and school lands.

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

**SECTION 1. AMENDMENT.** Section 15-04-09 of the North Dakota Century Code is amended and reenacted as follows:

##### **15-04-09. Notice of leasing - Publication - Posting.**

Each year at such time as in its judgment is for the best interests of the state, the board of university and school lands shall advertise and offer for lease the lands to be leased. All lands to be leased or offered for lease within the respective counties must be advertised for lease by the board by publication once each week for a period of three weeks prior to the day of leasing in the official county newspaper where said land is situated and in such other newspapers as the board deems appropriate. ~~A list of the lands to be offered for leasing must be filed with the county treasurer of the county wherein such lands are situated at least ten days prior to the day of leasing.~~ If, in the opinion of the board, the land that will be leased in any county will not be sufficient to warrant the expense of advertisement in a newspaper by description of each tract or parcel, the notice may be given by general advertisement.

**SECTION 2. AMENDMENT.** Section 15-04-19 of the North Dakota Century Code is amended and reenacted as follows:

##### **15-04-19. Lessee not to break or plow uncultivated land - Penalty.**

No lessee of land leased under the provisions of this chapter, or the lessee's heirs or assigns, may break, plow, or cultivate any unbroken land on any tract leased, nor cause nor permit it to be done by any other person. Any person who violates the provisions of this section ~~shall incur the forfeitures and liabilities provided in section 15-04-18~~ forfeits that person's lease and all rights and interests thereunder and is liable to the state for damages sustained by the state, and is guilty of a class B misdemeanor.

**SECTION 3. AMENDMENT.** Section 15-08-19.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-08-19.1. Organized event.**

1. Upon written request, the commissioner of university and school lands may allow by written agreement or permit, an organized event involving public access or activity on trust lands if the event:
  - a. Is an appropriate use of trust lands;
  - b. Does not damage trust lands;
  - c. Does not have a negative impact on the value or financial return of the trust lands in violation of the board of university and school lands' fiduciary duty to the applicable trusts as determined by the commissioner;
  - d. Protects the state from liability and other claims for damage; and
  - e. Has been approved in writing by the ~~current surface land lessee, if the trust lands are leased~~ commissioner after consultation with the lessee if the lands are leased.
2. The commissioner may refuse to issue or renew a permit if the permit applicant has repeatedly violated the provisions of this chapter or rules or orders of the commissioner.

**SECTION 4. AMENDMENT.** Section 15-08-19.4 of the North Dakota Century Code is amended and reenacted as follows:

**15-08-19.4. Prohibited activities - Penalty.**

1. The following activities and items are prohibited on trust lands:
  - a. Target shooting, explosives, and exploding targets;
  - b. Camping, picnicking, or campfires;
  - c. Unattended trail cameras, hunting blinds, tree stands, and screw-in steps unless otherwise authorized by the commissioner of university and school lands;
  - d. Using bait to attract, lure, feed, or habituate wildlife for any purpose. For purposes of this subsection "bait" includes grains, screenings, minerals, salt, fruits, vegetables, hay, or any other natural or manufactured feeds, but not the use of lures, scents, or liquid attractants for hunting;
  - e. Disturbing or removing artifacts or any cultural, historical, archeological, or paleontological resources found on trust lands without written permission from the board of university and school lands;
  - f. Disposing of refuse, including garbage, bottles, cans, trees, branches, or other waste materials;
  - g. Dog training;
  - h. Metal detecting;
  - i. Guiding and outfitting;

- j. Collecting plant parts for sale or other commercial purposes;
  - k. Trapping, unless authorized in writing by the commissioner;
  - l. Tree cutting and firewood gathering, unless authorized in writing by the commissioner;
  - m. Beehives, unless specifically authorized in ~~a surface land lease~~writing by the commissioner; and
  - n. Organized events for which the commissioner has not issued a written agreement or permit in accordance with section 15-08-19.1.
2. An individual who violates subdivision n of subsection 1 is guilty of a class B misdemeanor.

**SECTION 5. REPEAL.** Section 15-04-18 of the North Dakota Century Code is repealed.

Approved March 22, 2023

Filed March 23, 2023

## CHAPTER 150

### HOUSE BILL NO. 1448

(Representatives Weisz, Dockter, Wagner)  
(Senator Klein)

AN ACT to amend and reenact section 15-06-02, subsection 7 of section 15.1-11-04, and section 54-01-13.2 of the North Dakota Century Code, relating to the composition of the county board of appraisers, required annual training, and land appraisal requirements.

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

**SECTION 1. AMENDMENT.** Section 15-06-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **15-06-02. County board of appraisers - How composed.**

~~The county superintendent of schools, the~~ chairman of the board of county commissioners; and the county auditor of each county constitutes the county board of appraisers of the original grant lands of the state in their respective counties. The county director of tax equalization shall serve as an assistant in making the appraisals.

**SECTION 2. AMENDMENT.** Subsection 7 of section 15.1-11-04 of the North Dakota Century Code is amended and reenacted as follows:

7. As secretary of the county committee:
  - a. Provide to the public information regarding the annexation of property to another school district;
  - b. Provide to the public all forms necessary for the annexation of property to another school district;
  - c. Compile information regarding school district annexations and dissolutions and provide such information to the appropriate county committees, at the time and in the manner directed by the state board of public school education; ~~and~~
  - d. Compile information regarding school district annexations, reorganizations, and dissolutions, and provide such information to the state board of public school education, at the time and in the manner directed by the state board; and
  - e. Attend annual training provided by the superintendent of public instruction and the North Dakota association of counties.

**SECTION 3. AMENDMENT.** Section 54-01-13.2 of the North Dakota Century Code is amended and reenacted as follows:

##### **54-01-13.2. Appraisal.**

The lands to be conveyed to the United States of America and also the lands to be taken in exchange therefor, under the provisions of section 54-01-13.1, must be appraised by ~~the county superintendent of schools, the county auditor, and the chairman of the board of county commissioners in the county wherein which~~ the land is situated, at ~~its~~the land's fair market value, but ~~no~~ state school lands may not be appraised and valued at less than ten dollars per acre [.40 hectare]. The county director of tax equalization shall serve as an assistant in making the appraisals.

Approved March 23, 2023

Filed March 23, 2023

## CHAPTER 151

### HOUSE BILL NO. 1392

(Representatives D. Johnson, Richter, Sanford)  
(Senators Bekkedahl, Meyer, Schaible)

AN ACT to create and enact two new sections to chapter 15-10 of the North Dakota Century Code, relating to the authority to deposit money into institution accounts at the Bank of North Dakota.

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

**SECTION 1.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

##### **Affiliated nonprofit organization funds.**

An affiliated nonprofit organization that provides support to and is organized and operated for the benefit of an institution under the control of the state board of higher education may deposit money into an institution account in the Bank of North Dakota for the purpose of benefiting the mission and objectives of the institution. 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 15-10 of the North Dakota Century Code is created and enacted as follows:

##### **Student organization funds.**

Any student organization recognized by an institution under the control of the state board of higher education may deposit money into institution accounts in the Bank of North Dakota to be used for the benefit of students and student organizations or for charitable purposes. 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.

Approved April 6, 2023

Filed April 10, 2023

## CHAPTER 152

### HOUSE BILL NO. 1241

(Representatives Schreiber-Beck, Hagert, D. Johnson, Jonas, Lefor, Mitskog, Murphy,  
Nathe, Richter)  
(Senators Burckhard, Hogan, Meyer)

AN ACT to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to the workforce education innovation program; and to provide for a legislative management report.

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

**SECTION 1.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

#### Workforce education innovation program - Report to legislative management.

1. The state board of higher education may provide award funds to institutions under its control to create or enhance educational programs that address the workforce needs of North Dakota business and industry. An award made under this section may be used for curriculum development, equipment and technology purchases, facility modifications and equipment installation, hiring and training new and existing instructors, educational program promotion, and enhancement of postsecondary partnerships with primary and secondary schools.
2. The state board of higher education shall provide a biennial program report to the legislative management by September first of each even-numbered year. The report must include information by institution regarding:
  - a. The number, amount, and type of awards;
  - b. The name of each educational program created, enhanced, or promoted;
  - c. The amount and percentage of funds used for leadership and coordination costs; and
  - d. Detailed expense reports, including the type of equipment and technology purchased and the number of instructors hired or trained.

Approved March 30, 2023

Filed April 3, 2023

## CHAPTER 153

### SENATE BILL NO. 2343

(Senators Lee, J. Roers, Schaible)  
(Representatives Sanford, Stemen, Swiontek)

AN ACT to create and enact two new sections to chapter 15-10 of the North Dakota Century Code, relating to the state board of higher education, reporting by the state commissioner of higher education, and records of the state board of higher education; to amend and reenact section 15-10-17 of the North Dakota Century Code, relating to state board of higher education policy; and to provide for a legislative management report.

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

**SECTION 1. AMENDMENT.** Section 15-10-17 of the North Dakota Century Code is amended and reenacted as follows:

##### **15-10-17. Specific powers and duties of the state board of higher education.**

The state board of higher education has all the powers and shall perform all the duties necessary to the control and management of the institutions described in this chapter. The state board of higher education shall establish a policy ensuring transparent communication between members of the board on all topics relating to the specific powers and duties under section 6 of article VIII of the Constitution of North Dakota and this section. Each member must have equal access to all current and historic information relating to the specific powers and duties under section 6 of article VIII of the Constitution of North Dakota and this section. In addition to the powers and duties specified in section 6 of article VIII of the Constitution of North Dakota, the board may:

1. a. Appoint and remove the president or other faculty head, and the professors, instructors, teachers, officers, and other employees of the several institutions under the board's control, fix the salaries for those positions within the limits of legislative appropriations; and fix the terms of office and prescribe the duties of the positions.
- b. Appoint and remove the commissioner of higher education, fix the commissioner's salary within the limits of legislative appropriations, and prescribe the commissioner's duties.
- c. Appoint and remove all university system office personnel, fix their salaries within the limits of legislative appropriations, fix their terms of office, and prescribe their duties.
- d. The board may hold an executive session to consider the appointment or removal of the commissioner of higher education, or a president or other faculty head, professor, instructor, teacher, officer, or other employee of an institution under the board's control unless the individual involved requests the meeting be open to other individuals or the public.

2. Authorize the employment of law enforcement officers having jurisdiction on property owned or leased by the state board of higher education to enforce laws and regulations at its institutions, or as otherwise provided in this subsection.
  - a. A law enforcement officer employed by North Dakota state university has jurisdiction on all property owned or leased by the state board of higher education and property on and within the boundaries of the intersection of nineteenth avenue north and Dakota drive south to eighth avenue north, eighth avenue north east to tenth street north, tenth street north north to nineteenth avenue north, nineteenth avenue north west to Dakota drive.
  - b. A law enforcement officer employed by the university of North Dakota has jurisdiction on all property owned or leased by the state board of higher education and property on and within the boundaries of the intersection of demers avenue and north fifty-fifth street, north fifty-fifth street north to university avenue, university avenue east to north forty-second street, north forty-second street north to gateway drive, gateway drive east to north columbia road, north columbia road south to tenth avenue north, tenth avenue north east to north twenty-fifth street, north twenty-fifth street south to sixth avenue north, sixth avenue north east to north twentieth street, north twentieth street south to fifth avenue north, fifth avenue north west to north twenty-third street, north twenty-third street south to university avenue, university avenue east to north twenty-first street, north twenty-first street south to dyke avenue, dyke avenue east to north washington street, north washington street south to demers avenue, and demers avenue west to north fifty-fifth street. Jurisdiction under this subdivision includes Grand Forks international airport.
  - c. A law enforcement officer employed by the North Dakota state college of science has jurisdiction on all property owned or leased by the state board of higher education and property on and within the boundaries of the intersection of seventh avenue north and eleventh street north, eleventh street north to sixteenth avenue north, sixteenth avenue north west to fourth street north, and fourth street north south to seventh avenue north.
  - d. A law enforcement officer employed by Bismarck state college has jurisdiction on all property owned or leased by the state board of higher education and property on and within the boundaries of the area delineated by the intersections of schaffer street and canary avenue, canary avenue and edwards avenue, edwards avenue and schaffer street, edwards avenue and ward road, ward road and college drive, and college drive and schaffer street.
  - e. A law enforcement officer employed by an institution under the control of the state board of higher education who is in "fresh pursuit" may continue beyond the jurisdictional boundaries of each institution to make an arrest, in compliance with a warrant or without a warrant under the conditions of section 29-06-15, if obtaining the aid of peace officers having jurisdiction beyond that limit would cause a delay permitting escape. As used in this subdivision, "fresh pursuit" has the same meaning as in section 29-06-07.
  - f. The state board of higher education may enter a joint powers agreement with a political subdivision to enable law enforcement from the political subdivision and law enforcement from the institution to provide secondary

- response to each other outside the jurisdictional boundaries provided in this subsection.
- g. Notwithstanding any other provision of law or joint powers agreement, any misdemeanor or felony violation of law occurring in or on property owned or leased by the state board of higher education or within the extraterritorial jurisdiction must be filed in district court unless the primary law enforcement officer involved is not employed by the state board of higher education. An infraction or noncriminal offense occurring in or on property owned or leased by the state board of higher education or within the extraterritorial jurisdiction may be filed in municipal court.
3. Set tuition and fees.
4. a. Establish a retirement program as an alternative to chapter 15-39.1 for university system employees subject to the following guidelines:
- (1) Benefits under the program must be provided through annuity contracts purchased by the board but which become the property of the participants;
  - (2) The cost of the annuity contracts must be defrayed by contributions made pursuant to rules of the state board of higher education;
  - (3) Eligible employees appointed before July 1, 1973, shall participate in the alternate retirement program only by their individual election. When the electing eligible employee is a member of the teachers' fund for retirement, the employee's assessments and employer's contributions together with interest credited at the current rate for one-year certificates then being paid by the Bank of North Dakota must be transferred to the employee's account in the alternate program. The election must be made before July 1, 1980, and shall relinquish all rights the eligible employee or the employee's beneficiary may have to benefits provided in chapters 15-39 and 15-39.2; and
  - (4) Employees of the university system who are members of the public employees retirement system under chapter 54-52 or 54-52.6 and who become entitled to participate in the alternate retirement program are entitled to a special annuity purchase in the alternate retirement program in accordance with this subdivision. An eligible employee who consents to have that employee's contribution included is entitled to have that employee's contribution and employer's contribution, with interest, in the public employees retirement system fund, used by the retirement board of the public employees retirement system to purchase for that employee an annuity in the alternate retirement program in lieu of any other rights under the public employees retirement fund. However, before the employer's contribution may be used for an annuity purchase, the employee's combined years of service with the public employees retirement system and the alternate retirement program must equal or exceed the years of service necessary to be eligible for retirement benefits under the public employees retirement system. An employee who transferred from the public employees retirement system before March 30, 1987, and who received a refund of that employee's contribution is entitled to have the employer's contribution, with interest, used to purchase an annuity

even if that employee did not purchase an annuity in the alternate employee program with the employee's contribution. If an employee makes the election allowed under this subdivision, that employee relinquishes all rights the employee or any of the employee's beneficiaries may have had to benefits provided under chapters 54-52 and 54-52.6.

- b. Provide for the administration of the alternate retirement program and establish rules for the program consistent with this subsection. This subsection does not derogate any existing retirement programs approved by the board.
5. Determine policy for purchasing by the university system in coordination with the office of management and budget as provided by law.
6. Establish by rule an early retirement program for faculty and officers of the board as defined by the board. The limitations on severance pay pursuant to section 54-14-04.3 and on requiring the employee to pay contributions to continue on the state uniform group insurance program upon retirement or upon termination of employment pursuant to section 54-52.1-03 do not apply to the early retirement program.
7. Adopt rules to protect the confidentiality of student records, medical records, and, consistent with section 44-04-18.4, trade secret, proprietary, commercial, and financial information.
8. Authorize and encourage university system entities to enter into partnerships, limited liability companies, joint ventures, or other contractual arrangements with private business and industry for the purpose of business or industrial development or fostering basic and applied research or technology transfer.
9. Adopt rules promoting research, encouraging development of intellectual property and other inventions and discoveries by university system employees, and protecting and marketing the inventions and discoveries. The rules must govern ownership or transfer of ownership rights and distribution of income that may be derived from an invention or discovery resulting from research or employment in the university system. The rules may provide for transfer of ownership rights or distribution of income to a private, nonprofit entity created for the support of the university system or one of its institutions.

**SECTION 2.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

**State commissioner of higher education - Board member information access - Report to the legislative management.**

The state commissioner of higher education shall provide a report to the legislative management on state board of higher education policies regarding communications between board members and board member access to current and historic board information.

**SECTION 3.** A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

**Records of the North Dakota university system and state board of higher education.**

The North Dakota university system and the state board of higher education may not deny a member of the governing body access to a record that is closed or confidential, as defined in chapter 44-04, including a meeting record, whether written or recorded, unless otherwise prohibited by law.

Approved April 26, 2023

Filed April 26, 2023

## CHAPTER 154

### HOUSE BILL NO. 1196

(Representatives Pyle, Heilman, Karls, Rohr, Schreiber-Beck)  
(Senators Lemm, Rust)

AN ACT to amend and reenact section 15-10-18.3 of the North Dakota Century Code, relating to free tuition for dependents of disabled veterans or veterans killed in action.

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

**SECTION 1. AMENDMENT.** Section 15-10-18.3 of the North Dakota Century Code is amended and reenacted as follows:

#### **15-10-18.3. Free tuition in North Dakota institutions of higher education.**

Any~~A~~ dependent, as defined in section 15-10-18.2, upon being duly accepted for enrollment into ~~any~~an undergraduate degree or certificate program of a North Dakota state institution of higher education, must be allowed to obtain a bachelor's degree or certificate of completion, for so long as the dependent is eligible, free of any tuition and fee charges ~~if the bachelor's degree or certificate of completion is earned within a forty-five month or ten-semester period or its equivalent and if tuition and fee charges do not include costs for aviation flight charges or expenses. Once an individual qualifies as a dependent under section~~section 15-10-18.2 and ~~15-10-18.3~~this section, the dependent may not be disqualified from the benefits of this section:

1. Due to the return of the prisoner of war;
2. Due to the return of the individual missing in action; or
3. Because the veteran through whom the benefit was obtained had a one hundred percent service-connected disability at the time of death.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 155

### SENATE BILL NO. 2130

(Senators Vedaa, Dever, Larson)  
(Representatives D. Anderson, Thomas)

AN ACT to amend and reenact subsection 2 of section 15-10-18.4 of the North Dakota Century Code, relating to the definition of peace officers.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 15-10-18.4 of the North Dakota Century Code is amended and reenacted as follows:

2. "Peace officer" means ~~any~~:
  - a. ~~Any person who is~~ employed by a state law enforcement agency or a political subdivision of the state who is charged with the prevention and detection of crime and the enforcement of the criminal laws of the state, and who has full power of arrest; or
  - b. A correctional officer employed by the state or a political subdivision of the state.

Approved March 22, 2023

Filed March 23, 2023

## CHAPTER 156

### HOUSE BILL NO. 1030

(Legislative Management)  
(Higher Education Committee)

AN ACT to amend and reenact sections 15-10-38.4, 15-10-59, 15-62.5-01, and 15-62.5-03, subdivision a of subsection 1 of section 15-62.5-04, and sections 15-63-01, 15-63-02, 15-63-03, 15-63-04, 15-63-05, 15.1-21-02.6, and 15.1-21-02.8 of the North Dakota Century Code, relating to dual-credit tuition scholarships, the North Dakota scholars program, Indian scholarships, and academic and career and technical education scholarships; and to repeal section 15-63-07 of the North Dakota Century Code, relating to the use of Indian scholarship refunds.

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

**SECTION 1. AMENDMENT.** Section 15-10-38.4 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-38.4. Dual-credit courses - Tuition scholarship program - Administered by the board.**

1. The state board of higher education shall administer a dual-credit tuition scholarship program to offer a tuition scholarship to students. The board shall adopt procedures to administer the program.
2. An eligible student may apply to the board to receive a scholarship toward the cost of tuition and fees at the accredited in-state public, private, or tribal institution of higher education at which the student is enrolled. To be eligible to receive a scholarship, an individual must:
  - a. Be enrolled and have completed at least one semester, quarter, or term at a public, private, or tribal institution of higher education with a physical presence in the state;
  - b. Have:
    - (1) Graduated from a high school in the state;
    - (2) Graduated from a high school in a bordering state under chapter 15.1-29;
    - (3) Graduated from a nonpublic high school in a bordering state while residing with a custodial parent in this state; or
    - (4) Completed a program of home education under chapter 15.1-23; and
  - c. Have successfully completed at least one dual-credit course provided by an accredited public, private, or tribal institution ~~under the control of the state board of higher education in the state~~ while enrolled in high school or a program of home education in the state.

3. The state board of higher education shall provide an eligible student with a tuition scholarship equal to ~~fifty percent of the cost of the~~ two hundred fifty dollars for one successfully completed dual-credit course, five hundred dollars for two successfully completed dual-credit courses, or seven hundred fifty dollars for three or more successfully completed dual-credit courses. ~~The dual-credit courses must be provided by an accredited public, private, or tribal institution under the control of the state board of higher education in the state, and completed by the student while in high school or a program of home education, in an amount up to seven hundred fifty dollars.~~ A scholarship received by a student during any semester, quarter, or term of enrollment under this section may not exceed the cost of tuition and fees for the semester, quarter, or term. ~~A student is not eligible to receive more than seven hundred fifty dollars under this section.~~

**SECTION 2. AMENDMENT.** Section 15-10-59 of the North Dakota Century Code is amended and reenacted as follows:

**15-10-59. Annual report - Scholarships. (Effective through July 31, 20242030)**

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

**Annual report - Scholarships. (Effective after July 31, 20242030)** The state board of higher education shall provide to the legislative management an annual report regarding the number of North Dakota scholarships provided and demographic information pertaining to the recipients.

**SECTION 3. AMENDMENT.** Section 15-62.5-01 of the North Dakota Century Code is amended and reenacted as follows:

**15-62.5-01. Scholars program.**

The state board of higher education shall administer the scholars program for the purpose of providing a merit-based scholarship to an individual who:

1. a. Graduated from a high school in this state;
  - b. Graduated from a high school in a bordering state, pursuant to chapter 15.1-29;
  - c. Graduated from a nonpublic high school in a bordering state while residing with a custodial parent in this state; or
  - d. Completed a program of home education supervised in accordance with chapter 15.1-23;
2. On the ACT achieved a composite score of 30 or higher, or an equivalent score on an equivalent nationally recognized standardized test approved by the state board of higher education, ~~achieved composite scores that ranked the individual at or above the ninety-fifth percentile among those who took the ACT or an equivalent nationally recognized standardized test approved by the state board of higher education,~~ prior to July first in the calendar year preceding the individual's post-secondary enrollment;

3. a. Is enrolled at an accredited institution of higher education with a physical presence in this state that offers a program of instruction equal to at least two academic years;
- b. Because of a medically certifiable disability is enrolled at an accredited institution of higher education outside of this state that offers the individual special services or facilities not available in this state, provided the institution offers a program of instruction equal to at least two academic years; and
4. Is pursuing a course of study determined by the board to be full-time.

**SECTION 4. AMENDMENT.** Section 15-62.5-03 of the North Dakota Century Code is amended and reenacted as follows:

**15-62.5-03. Scholars program - Ranking and selection of recipients.**

1. The state board of higher education shall rank scholars program applicants by their ACT composite scores or equivalent scores on a nationally recognized standardized test approved by the state board of higher education.
2. If two or more applicants have the same ~~composite scores~~ as determined in subsection 1, they must be ranked by the numeric sum of their four scale scores on the ACT or equivalent scores ~~on~~. If a nationally recognized standardized test approved by the state board of higher education does not calculate scale scores, the equivalent will be zero.
3. ~~If two or more applicants have the same composite scores and the same numeric sum of the four scale scores as determined in subsections 1 and 2, they must be ranked by the numeric sum of their English and mathematics scores. If a nationally recognized standardized test approved by the state board of higher education does not calculate equivalent English and mathematics scores, the equivalent will be zero.~~
4. The state board of higher education may establish additional criteria to rank applicants who have the same ~~numeric sum of their English and mathematics scores~~ as determined in subsections 1 through 3.
5. Scholarships must be offered to applicants in descending order according to this ranking until available funds have been expended or until the pool of applicants has been exhausted.

**SECTION 5. AMENDMENT.** Subdivision a of subsection 1 of section 15-62.5-04 of the North Dakota Century Code is amended and reenacted as follows:

- a. Each semester, the state board of higher education shall provide to an eligible student a scholarship in an amount not exceeding the tuition charged at the institution in which the student is enrolled, provided the amount ~~may~~does not exceed the highest undergraduate semester tuition charged at an institution of higher education under the control of the state board of higher education.

**SECTION 6. AMENDMENT.** Section 15-63-01 of the North Dakota Century Code is amended and reenacted as follows:

**15-63-01. State board for ~~Indian~~Native American scholarships.**

There is hereby established a state board for ~~Indian~~Native American scholarships consisting of an ~~Indiana Native American~~ appointed by the governor, the executive director of the state Indian affairs commission, and the commissioner of higher education or the commissioner's designee. The commissioner of higher education or the commissioner's designee shall serve as chairperson and the executive director of the state Indian affairs commission shall serve as secretary of the board for ~~Indian~~Native American scholarships. The state board of higher education shall request scholarship funds and staff to administer the ~~Indian~~Native American scholarship program in the board's biennial budget request.

**SECTION 7. AMENDMENT.** Section 15-63-02 of the North Dakota Century Code is amended and reenacted as follows:

**15-63-02. Duties of board.**

The state board for ~~Indian~~Native American scholarships shall:

1. Award ~~scholarship grants~~scholarships as provided in this chapter.
2. Direct the North Dakota university system in administration of awards under this chapter.
3. Make necessary rules and establish standards, requirements, and procedures for the administration of this chapter.
- 3-4. Encourage members of federally recognized Indian tribes to attend and be ~~graduated~~graduate from any accredited institution of higher learning or state accredited career and technical education program ~~within~~with a physical presence in this state, and to ~~make application~~apply for scholarships.

**SECTION 8. AMENDMENT.** Section 15-63-03 of the North Dakota Century Code is amended and reenacted as follows:

**15-63-03. Number and nature of scholarships.**

The state board for ~~Indian~~Native American scholarships shall provide scholarships each year for resident members of federally recognized Indian tribes to ~~entitle persons so selected to enter and~~ attend any accredited institution of higher learning or state accredited career and technical education program ~~within~~with a physical presence in this state upon compliance with all requirements for admission and to pursue any course or courses offered in such institutions or programs.

**SECTION 9. AMENDMENT.** Section 15-63-04 of the North Dakota Century Code is amended and reenacted as follows:

**15-63-04. Eligibility of candidates - Determination.**

~~The initial and continuing scholarship~~Scholarship eligibility of state residents who are enrolled members of federally recognized Indian tribes must be determined by the state board for ~~Indian~~Native American scholarships ~~after the candidate has gained admission to any institution of higher learning or state career and technical education program within this state and has had this fact certified to the board annually for applicants.~~ Factors to be considered in the award of these scholarships are the candidate's financial need and probable and continuing success as a student.

**SECTION 10. AMENDMENT.** Section 15-63-05 of the North Dakota Century Code is amended and reenacted as follows:

### 15-63-05. Scholarship payments - Conditions.

Upon the granting award of a scholarship and ~~acceptance thereof~~, the recipient is eligible for a credit ~~in fees~~ inat the enrolling institution of higher learning or ~~state accredited~~ career and technical education program ~~to apply toward the cost of registration, health, activities, board, books, and other necessary items of with a physical presence in this state. The scholarship may be applied to tuition, fees, room and board, books and supplies, and other educational expenses not to exceed six hundred sixty-seven dollars per quarter for three quarters, or clock-hour term or one thousand dollars per semester for two semesters. Awards may not exceed two thousand dollars in any academic year. The board for Indian Native American scholarships may reduce the amount of any scholarship to accord with individual financial need or funds available. After the enrolling institution or program has deducted the amount due such institution, the remaining balance must be given to the recipient for necessary expenses during the quarter or semester. The board for Native American scholarships may set a priority application date. At the beginning of each quarter, clock-hour term, or semester of a regular academic year, the board for Indian scholarships shall certify to the director of the office of management and budget the name of each recipient and the amount payable, and the director of the office of management and budget shall issue a warrant to the state treasurer who shall pay the amount of the scholarship to the institution of higher learning or state career and technical education program in which the recipient is enrolled. Renewal of the scholarship award is subject to the maintenance of a minimum grade average of "C" in the courses taken, the North Dakota university system shall verify enrollment and other eligibility criteria set forth by the state board for Native American scholarships for awarded applicants before issuing payment to the enrolling institution. After the enrolling institution has deducted the amount due to the institution, the remaining balance must be distributed to the awarded applicant for necessary expenses during the quarter, clock-hour term, or semester.~~

<sup>87</sup> **SECTION 11. AMENDMENT.** Section 15.1-21-02.6 of the North Dakota Century Code is amended and reenacted as follows:

#### **15.1-21-02.6. North Dakota scholarship - Amount - Applicability. (Effective through July 31, 20242030)**

1. a. The state board of higher education shall provide to any student certified as being eligible by the superintendent of public instruction a North Dakota scholarship, 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 with a physical presence in this state, maintains a cumulative grade point average of 2.75, and maintains progress toward program completion.
- b. The state board of higher education shall provide to any student certified as being eligible by the superintendent of public instruction a North Dakota scholarship, a North Dakota academic scholarship, or a North Dakota career and technical education scholarship in the amount of five hundred dollars for each quarter or clock-hour term during which the student is enrolled full time at an accredited institution of higher education with a physical presence in this state or an accredited private career school with

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<sup>87</sup> Section 15.1-21-02.6 was also amended by section 1 of House Bill No. 1382, chapter 190.

- a physical presence in this state, maintains a cumulative grade point average of 2.75, and maintains progress toward program completion.
2. The state board shall monitor each scholarship recipient to ensure that the student meets the academic and other requirements of this section. Upon determining a recipient student has failed to meet the requirements of this section, the board shall provide notification to the student within ten business days.
  3. A student is not entitled to receive more than six thousand dollars under this section.
  4. The state board of higher education shall forward the scholarship directly to the institution in which the student is enrolled.
  5.
    - a. This section does not require a student to be enrolled in consecutive semesters, quarters, or clock-hour terms.
    - b. A scholarship under this section is valid only for six academic years after the student's graduation from high school and may be applied to a graduate or professional program.
  6. A scholarship under this section is available to any eligible resident student who fulfills the requirements of section 15.1-21-02.4, section 15.1-21-02.5, or section 15.1-21-02.10 and who:
    - a. Graduates from a high school in this state;
    - b. Graduates from a high school in a bordering state under chapter 15.1-29;
    - c. Graduates from a nonpublic high school in a bordering state while residing with a custodial parent in this state; or
    - d. Completes a program of home education supervised in accordance with chapter 15.1-23.
  7.
    - a. For purposes of North Dakota scholarship eligibility under this section, "full-time" has the same meaning as the term is defined by the institution the student is attending.
    - b. A student who is enrolled less than full-time may retain scholarship eligibility if the student is in the final semester, quarter, or clock-hour term before program completion. The waiver of the full-time enrollment status requirement for scholarship eligibility may not apply to a student more than once.
    - c. For the purpose of North Dakota scholarship eligibility under this section, "progress toward program completion" means earning the following minimum number of credits after each semester, quarter, or clock-hour term disbursement to qualify for the subsequent disbursement:
      - (1) Twenty-four credits after disbursement two;
      - (2) Thirty-nine credits after disbursement three;

- (3) Fifty-four credits after disbursement four;
  - (4) Sixty-nine credits after disbursement five;
  - (5) Eighty-four credits after disbursement six; and
  - (6) Ninety-nine credits after disbursement seven.
8. For purposes of scholarship eligibility under this section, "clock-hour term" has the same meaning as the term is defined by the state board of higher education. The state board of higher education shall determine the conversion of:
- a. Clock hours to credit hours; and
  - b. Percentage-based grading to grade point average.

**15.1-21-02.6. North Dakota scholarship - Amount - Applicability. (Effective after July 31, 2024~~2030~~)**

1. a. The state board of higher education shall provide to any student certified as being eligible by the superintendent of public instruction a North Dakota 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 with a physical presence in this state, maintains a cumulative grade point average of 2.75, and maintains progress toward program completion.
  - b. The state board of higher education shall provide to any student certified as being eligible by the superintendent of public instruction a North Dakota scholarship in the amount of five hundred dollars for each quarter or clock-hour term during which the student is enrolled full time at an accredited institution of higher education with a physical presence in this state or an accredited private career school with a physical presence in this state, maintains a cumulative grade point average of 2.75, and maintains progress toward program completion.
2. The state board shall monitor each scholarship recipient to ensure the student meets the academic and other requirements of this section. Upon determining a recipient student has failed to meet the requirements of this section, the board shall provide notification to the student within ten business days.
  3. A student is not entitled to receive more than six thousand dollars under this section.
  4. The state board of higher education shall forward the scholarship directly to the institution in which the student is enrolled.
  5. a. This section does not require a student to be enrolled in consecutive semesters, quarters, or clock-hour terms.
  - b. A scholarship under this section is valid only for six academic years after the student's graduation from high school and may be applied to a graduate or professional program.

6. A scholarship under this section is available to any eligible resident student who fulfills the requirements of section 15.1-21-02.10 and who:
  - a. Graduates from a high school in this state;
  - b. Graduates from a high school in a bordering state under chapter 15.1-29;
  - c. Graduates from a nonpublic high school in a bordering state while residing with a custodial parent in this state; or
  - d. Completes a program of home education supervised in accordance with chapter 15.1-23.
7.
  - a. For purposes of North Dakota scholarship eligibility under this section, "full-time" has the same meaning as the term is defined by the institution the student is attending.
  - b. A student who is enrolled less than full-time may retain scholarship eligibility if the student is in the final semester, quarter, or clock-hour term before program completion. The waiver of the full-time enrollment status requirement for scholarship eligibility may not apply to a student more than once.
  - c. For the purpose of North Dakota scholarship eligibility under this section, "progress toward program completion" means earning the following minimum number of credits after each semester, quarter, or clock-hour term disbursement to qualify for the subsequent disbursement:
    - (1) Twenty-four credits after disbursement two;
    - (2) Thirty-nine credits after disbursement three;
    - (3) Fifty-four credits after disbursement four;
    - (4) Sixty-nine credits after disbursement five;
    - (5) Eighty-four credits after disbursement six; and
    - (6) Ninety-nine credits after disbursement seven.
8. For purposes of scholarship eligibility under this section, "clock-hour term" has the same meaning as the term is defined by the state board of higher education. The state board of higher education shall determine the conversion of:
  - a. Clock hours to credit hours; and
  - b. Percentage-based grading to grade point average.

**SECTION 12. AMENDMENT.** Section 15.1-21-02.8 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-21-02.8. North Dakota scholarship - Eligibility - One-time exception.**  
**(Effective through July 31, 20242030)**

1. a. Notwithstanding section 15.1-21-02.6, if a student's cumulative grade point average as determined by the state board of higher education at the conclusion of a semester, quarter, or clock-hour term is below 2.75, the board shall grant an exception and provide the North Dakota scholarship to which the student would otherwise be entitled for the next semester, quarter, or clock-hour term in which the student is enrolled full time. The exception provided by this section is applicable to a student only one time.
- b. If a student's cumulative grade point average as determined by the state board of higher education at the conclusion of a semester, quarter, or clock-hour term is below 2.75 for a second time, the student is no longer eligible to receive a North Dakota, North Dakota academic, or North Dakota career and technical education scholarship.
2. For purposes of scholarship eligibility under this section, "clock-hour term" has the same meaning as the term is defined by the state board of higher education. The state board of higher education shall determine the conversion of:
  - a. Clock hours to credit hours; and
  - b. Percentage-based grading to grade point average.

**15.1-21-02.8. North Dakota scholarship - Eligibility - One-time exception. (Effective after July 31, 20242030)**

1. a. Notwithstanding section 15.1-21-02.6, if a student's cumulative grade point average as determined by the state board of higher education at the conclusion of a semester, quarter, or clock-hour term is below 2.75, the board shall grant an exception and provide the North Dakota scholarship to which the student would otherwise be entitled for the next semester, quarter, or clock-hour term in which the student is enrolled full time. The exception provided by this section is applicable to a student only one time.
- b. If a student's cumulative grade point average as determined by the state board of higher education at the conclusion of a semester, quarter, or clock-hour term is below 2.75 for a second time, the student is no longer eligible to receive a North Dakota scholarship.
2. For purposes of scholarship eligibility under this section, "clock-hour term" has the same meaning as the term is defined by the state board of higher education. The state board of higher education shall determine the conversion of:
  - a. Clock hours to credit hours; and
  - b. Percentage-based grading to grade point average.

**SECTION 13. REPEAL.** Section 15-63-07 of the North Dakota Century Code is repealed.

Approved April 12, 2023

Filed April 13, 2023

## CHAPTER 157

### HOUSE BILL NO. 1226

(Representatives Kempenich, Pyle)  
(Senators Rummel, Schaible)

AN ACT to amend and reenact section 15-10-44.3 of the North Dakota Century Code, relating to working papers of higher education internal auditors and compliance officers.

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

**SECTION 1. AMENDMENT.** Section 15-10-44.3 of the North Dakota Century Code is amended and reenacted as follows:

#### **15-10-44.3. Internal auditors' auditor and compliance officer working papers.**

1. For purposes of this section, "higher":
  - a. "Compliance officer" means the compliance officer of the North Dakota university system.
  - b. "Higher education internal auditor" means an internal auditor of the North Dakota university system and the institutions under the control of the state board of higher education.
2. Working papers of a higher education internal auditor or compliance officer are not public records and are exempt from section 44-04-18. Working papers include records kept by a higher education internal auditor or compliance officer of the procedures applied, the tests performed, the information obtained, draft audit and compliance reports, and the pertinent conclusions reached in the audit engagement.
3. At the discretion of a higher education internal auditor or compliance officer, working papers ~~of a higher education internal auditor~~ may be made available for inspection. A draft audit or compliance report released to the governing body or management of the audited entity is confidential until the final audit report is issued or work ceases on the audit engagement. The issued audit or compliance report is public information. The working papers of an issued audit or compliance report are public except for any information designated as confidential or exempt from disclosure by state or federal law. At the discretion of a higher education internal auditor or compliance officer, all or a portion of the working papers ~~of the higher education internal auditor~~ of an issued audit or compliance report may be declared confidential. The declaration of confidentiality must state the reason for the confidentiality and the date, as reasonably may be determined at the time, when the working papers will be made public.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 158

### HOUSE BILL NO. 1489

(Representatives Koppelman, Louser, Meier, Novak, S. Olson, Steiner, VanWinkle)  
(Senators Estenson, Myrdal, Paulson, Wobbema)

AN ACT to create and enact chapter 15-10.6 of the North Dakota Century Code, relating to requiring institutions of higher education designating athletic teams and sports for male, female, or coed participation.

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

<sup>88</sup> **SECTION 1.** Chapter 15-10.6 of the North Dakota Century Code is created and enacted as follows:

##### **15-10.6-01. Definitions.**

As used in this chapter:

1. "Institution" means an institution under the control of the state board of higher education or a private institution of higher education whose athletic teams compete against an institution under the control of the state board of higher education.
2. "Sex" means the biological state of being female or male, based on an individual's nonambiguous sex organs, chromosomes, and endogenous hormone profile at birth.
3. "Student" means an individual enrolled in at least one course offered by an institution.

##### **15-10.6-02. Designation of athletic teams.**

1. An intercollegiate or intramural athletic team or sport sponsored by an institution must be expressly designated as one of the following based on the sex of the intended participants:
  - a. "Males", "men", or "boys";
  - b. "Females", "women", or "girls"; or
  - c. "Coed" or "mixed".
2. An athletic team or sport designated for "females", "women", or "girls" may not be open to students of the male sex.
3. This section may not be construed to restrict the eligibility of a student to participate in interscholastic or intramural athletic teams or sports designated as "males", "men", or "boys" or designated as "coed" or "mixed".

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<sup>88</sup> Section 15-10.6-01 was amended by section 3 of House Bill No. 1474, chapter 66.

**15-10.6-03. Adverse action against institution prohibition.**

A government entity, a licensing or accrediting organization, or an athletic association or organization may not entertain a complaint, open an investigation, or take any other adverse action against an institution for maintaining separate intercollegiate or intramural athletic teams or sports for students of the female sex.

**15-10.6-04. Cause of action.**

1. A student who is deprived of an athletic opportunity or who suffers direct or indirect harm as a result of an institution knowingly violating this chapter has a private cause of action for injunctive relief, damages, and any other relief available under law against the institution.
2. A student subject to retaliation or other adverse action by an institution or athletic association or organization as a result of reporting a violation of this chapter to an employee or representative of the institution or athletic association or organization, or to a state or federal agency with oversight of institutions in the state has a private cause of action for injunctive relief, damages, and any other relief available under law against the institution or athletic association or organization.
3. An institution that suffers direct or indirect harm as a result of a violation of this chapter has a private cause of action for injunctive relief, damages, and any other relief available under law against the government entity, licensing or accrediting organization, or athletic association or organization.
4. A civil action must be initiated within two years after the harm occurred. A person that prevails on a claim brought pursuant to this section is entitled to monetary damages, including for any psychological, emotional, and physical harm suffered, reasonable attorneys' fees and costs, and any other appropriate relief.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 159

### SENATE BILL NO. 2247

(Senators Paulson, Lemm, Wobbema)  
(Representatives Dyk, Satrom, Toman)

AN ACT to create and enact chapter 15-10.6 of the North Dakota Century Code, relating to specified concepts at institutions of higher education.

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

**SECTION 1.** Chapter 15-10.6 of the North Dakota Century Code is created and enacted as follows:

##### **15-10.6-01. Definitions.**

As used in this chapter:

1. "Race or sex scapegoating" means assigning fault, blame, or bias to a race or sex, or to a member of a race or sex, because of their race or sex, and includes a claim that, consciously or subconsciously, and by virtue of an individual's race or sex, a member of a race is inherently racist or inclined to oppress others, or a member of a sex is inherently sexist or inclined to oppress others.
2. "Race or sex stereotyping" means ascribing a character trait, value, moral and ethical code, privilege, status, or belief to a race or sex, or to an individual because of the individual's race or sex.
3. "Specified concept" means a concept that:
  - a. One race or sex is inherently superior or inferior to another race or sex;
  - b. An individual, by virtue of the individual's race or sex, is inherently privileged, racist, sexist, or oppressive, whether consciously or subconsciously;
  - c. An individual should be discriminated against or receive adverse treatment because of the individual's race or sex;
  - d. An individual's moral character is determined by the individual's race or sex;
  - e. An individual, by virtue of the individual's race or sex, bears responsibility for an action committed in the past by other members of the same race or sex;
  - f. An individual should feel discomfort, guilt, anguish, or another form of psychological distress solely because of the individual's race or sex;
  - g. A meritocracy is inherently racist or sexist, or designed by a particular race or sex to oppress another race or sex;

- h. This state or the United States is fundamentally or irredeemably racist or sexist;
  - i. Promotes or advocates the violent overthrow of the United States government;
  - j. Promotes division between, or resentment of, a race, sex, religion, creed, nonviolent political affiliation, social class, or class of people;
  - k. Ascribes a character trait, value, moral or ethical code, privilege, or belief to a race or sex, or to an individual because of the individual's race or sex;
  - l. The rule of law does not exist, but instead is a series of power relationships and struggles among racial or other groups;
  - m. All Americans are not created equal and are not endowed by their creator with certain unalienable rights, including life, liberty, and the pursuit of happiness;
  - n. Governments should deny to any person within the government's jurisdiction the equal protection of the law;
  - o. Includes race or sex stereotyping; or
  - p. Includes race or sex scapegoating.
4. "Training" includes a noncredit earning:
- a. Seminar;
  - b. Workshop; or
  - c. Orientation.

**15-10.6-02. Specified concept - Prohibition on discrimination.**

- 1. A student or employee of an institution under the control of the state board of higher education may not be:
  - a. Penalized, discriminated against, or receive adverse treatment due to the individual's refusal to support, believe, endorse, embrace, confess, act upon, or otherwise assent to or oppose a specified concept.
  - b. Required to endorse or oppose a specific ideology or political viewpoint to be eligible for hiring, tenure, promotion, or graduation.
- 2. An institution under the control of the state board of higher education may not ask the ideological or political viewpoint of a student, job applicant, job candidate, or candidate for promotion or tenure.
- 3. An individual who believes a violation of this section has occurred may pursue all equitable or legal remedies that may be available to the individual in a state or federal court of competent jurisdiction.

**15-10.6-03. Prohibition on specified concept training.**

1. An institution under the control of the state board of higher education may not:
  - a. Conduct mandatory noncredit earning training of a student or employee if the training includes a specified concept.
  - b. Use a noncredit earning training program or training materials in a noncredit earning training for a student or employee if the program or material includes a specified concept.
  - c. Use funds appropriated by the state to incentivize, beyond payment of regular salary or other regular compensation, a faculty member to incorporate a specified concept into academic curriculum.
2. If an institution under the control of the state board of higher education employs an individual whose primary duties include diversity, the duties of that employee also must include efforts to strengthen and increase intellectual diversity among students and faculty of the institution at which the individual is employed.

#### **15-10.6-04. Construction and purpose.**

1. This chapter may not be interpreted to prohibit:
  - a. An individual who provides training from responding to a question regarding a specified concept so long as the response does not endorse, advocate, or oppose a specified concept;
  - b. An institution from considering the subject matter competency of a candidate for a faculty position or promotion if the subject matter is germane to the candidate's field of scholarship;
  - c. An institution from training students or employees on the nondiscrimination requirements of federal or state law, or from requiring a student, faculty member, or employee to comply with federal or state laws, including antidiscrimination laws, or from taking action against a student, professor, or employee for a violation of federal or state law; or
  - d. Limit or restrict the academic freedom of faculty or to prevent faculty members from teaching, researching, or writing publications about the specified concepts or related topics.
2. This chapter does not authorize an institution to infringe on the rights of freedom of speech protected by the First Amendment to the United States Constitution.

Approved April 24, 2023

Filed April 24, 2023

## CHAPTER 160

### SENATE BILL NO. 2161

(Senators Sickler, Bekkedahl, Patten, Sorvaag)  
(Representatives Mitskog, Nathe)

AN ACT to amend and reenact sections 15-11-40 and 57-51.1-07.9 of the North Dakota Century Code, relating to the state energy research center and the center's funding.

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

**SECTION 1. AMENDMENT.** Section 15-11-40 of the North Dakota Century Code is amended and reenacted as follows:

#### **15-11-40. State energy research center - Report. (~~Effective through June 30, 2027~~)**

1. The state energy research center at the university of North Dakota energy and environmental research center is created ~~for the purpose of conducting to~~ conduct exploratory, transformational, and innovative research that advances future energy opportunities and benefits the state's economy and environment through:
  - a. Exploratory research of technologies and methodologies that facilitate the prudent development, and clean and efficient use, of the state's energy resources;
  - b. Greater access to energy experts for timely scientific and engineering studies to support the state's interests; and
  - c. Education and outreach related to the state's energy resources.
2. The state energy research center shall report all research activities and accomplishments annually to the interim legislative energy development and transmission committee and ~~to~~ the industrial commission. Upon request, the state energy research center shall report all research activities and accomplishments to the appropriations committees of the legislative assembly.
3. To ~~effectuate~~ carry out the purposes of this section, the energy and environmental research center may:
  - a. Select the research topics and projects to be pursued;
  - b. Enter contracts or agreements with other North Dakota institutions of higher education to support select research topics and projects;
  - c. Enter contracts or agreements with federal, private, and nonprofit organizations to carry out selected research topics and projects; and
  - d. ~~Accepting~~ Accept donations, grants, contributions, and gifts from any source to carry out the selected research topics and projects.

4. The state energy research center may not conduct research or pursue projects that will result in the exploration, storage, treatment, or disposal of high-level radioactive waste in North Dakota.

**SECTION 2. AMENDMENT.** Section 57-51.1-07.9 of the North Dakota Century Code is amended and reenacted as follows:

**57-51.1-07.9. State energy research center fund - Continuing appropriation. (Effective through ~~June 30, 2027~~ June 30, 2029)**

The state energy research center fund is a special fund in the state treasury. Before depositing oil and gas gross production tax and oil extraction tax revenues under section 57-51.1-07.5, one percent of the revenues must be deposited monthly into the state energy research center fund, up to ~~five~~seven million ~~five hundred thousand~~ dollars per biennium. All moneys deposited in the state energy research center fund and interest on all such moneys are appropriated on a continuing basis to the industrial commission for distribution to the state energy research center. The state energy research center shall use the funds in accordance with section 15-11-40.

Approved April 26, 2023

Filed April 27, 2023

## CHAPTER 161

### SENATE BILL NO. 2269

(Senators Davison, Schaible, Sorvaag)  
(Representatives Bosch, Heinert, Monson)

AN ACT to amend and reenact sections 15-19-00.1, 15-19-01, 15-19-02, 15-19-06, 15-19-08, and 15-20.1-03 of the North Dakota Century Code, relating to the administration of the center for distance education.

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

**SECTION 1. AMENDMENT.** Section 15-19-00.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **15-19-00.1. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Administration" includes the leadership of the center for distance education.
2. "Board" means the ~~state board for career and technical education~~board of public school education.
- ~~3.2.~~ "Center" means the North Dakota center for distance education.
- ~~4.3.~~ "Director" means the ~~director and executive officer of the department of career and technical education~~of the center for distance education.

<sup>89</sup> **SECTION 2. AMENDMENT.** Section 15-19-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **15-19-01. North Dakota center for distance education courses - Establishment - Enrollment of students - Courses of instruction.**

The state shall provide kindergarten through grade twelve courses, comprehensive educational support, and high school diplomas through the center for distance education under the following provisions:

1. A complete curriculum prescribed by state-mandated education accreditation entities which meets the requirements for digital education the superintendent of public instruction has determined to be appropriate.
2. A superintendent or an administrator of a school may deny the enrollment of a student in that district at the center for distance education except as provided in subsection 5.
3. The center for distance education may provide services to persons who are not North Dakota residents.

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<sup>89</sup> Section 15-19-01 was also amended by section 1 of House Bill No. 1156, chapter 185, and section 1 of House Bill No. 1376, chapter 186.

4. Center for distance education students shall pay fees as may be prescribed by the ~~state board for career and technical education~~superintendent of public instruction.
5. Students exempt from the compulsory school attendance laws pursuant to subdivision e of subsection 1 of section 15.1-20-02 may enroll in distance education courses offered through the center for distance education. These students may study their center for distance education lessons in their learning environment under the supervision of a parent.

**SECTION 3. AMENDMENT.** Section 15-19-02 of the North Dakota Century Code is amended and reenacted as follows:

**15-19-02. Administration Center for distance education - Appointment and duties.**

The program of and all activities related to the center for distance education are the responsibility of the director of the center for distance education and under the authority of the ~~state board for career and technical education~~superintendent. ~~The director of the department of career and technical education shall hire administration and staff for the center for distance education of public instruction and the board. The director is appointed by and reports to the superintendent of public instruction. The center must have a separate budget and a separate staff from the department of public instruction who must be classified under the state personnel merit system. The administration of the center~~director shall carry out the responsibilities in operating the center for distance education in the manner approved by the state board for career and technical education, under the supervision of the director of the department of career and technical educationsuperintendent of public instruction, and compliant with requirements established by the superintendent of public instruction and the education standards and practices board for public school administrators and teachers. ~~The state board for career and technical education shall administer the responsibilities of the board of a school district relating to the center for distance education.~~

**SECTION 4. AMENDMENT.** Section 15-19-06 of the North Dakota Century Code is amended and reenacted as follows:

**15-19-06. Special funds - Deposit of collections - Transfers from general fund appropriations.**

1. A special operating fund for the center for distance education must be maintained within the state treasury and all income and fees collected by the center for distance education from any source must be remitted monthly by the ~~director~~superintendent of public instruction to the state treasurer and credited to the special operating fund. All expenditures from the fund must be within the limits of legislative appropriations and must be made upon vouchers, signed and approved by the director. Upon approval of the vouchers by the office of the budget, warrant-checks must be prepared by the office of management and budget.
2. The ~~state board for career and technical education~~superintendent of public instruction may establish an endowment and scholarship fund to provide financial grants to students enrolled in courses offered through the center for distance education. The endowment and scholarship fund may consist only of those funds specifically appropriated by the legislative assembly and property received by the center for distance education as a gift, devise, or bequest. Any

gift, devise, or bequest of property received by the center for distance education which is designated by the ~~state board for career and technical education~~ superintendent of public instruction and donor for the endowment and scholarship fund must be deposited in the scholarship fund at the Bank of North Dakota. The center for distance education may draw on the endowment and scholarship fund for the award of endowments and scholarships within the limits and rules adopted by the ~~state board for career and technical education~~ superintendent of public instruction.

**SECTION 5. AMENDMENT.** Section 15-19-08 of the North Dakota Century Code is amended and reenacted as follows:

**15-19-08. Distance education support and services.**

The amount of money appropriated by the legislative assembly for distance education support and services for a biennium, or so much thereof as may be necessary, must be expended first for work provided by distance education as determined by the center for distance education and approved by the ~~state board for career and technical education~~ superintendent of public instruction.

**SECTION 6. AMENDMENT.** Section 15-20.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**15-20.1-03. Powers and duties of state board relating to career and technical education.**

The state board shall have all authority necessary to cooperate with the United States department of education or other department or agency of the United States of America in the administration of acts of Congress relating to career and technical education, including the following powers and duties:

1. To administer any legislation enacted by the legislative assembly of this state pursuant to or in conformity with acts of Congress relating to career and technical education.
2. To administer the funds provided by the federal government and by this state for the promotion of career and technical education and to contract with:
  - a. Any public or private institution or agency, board of trustees of any agricultural and training school, or school district of this state; or
  - b. Any public or private institution or agency, or political subdivision, of another state.
3. To formulate plans for the promotion of career and technical education in such subjects as are an essential and integral part of the public school system of education in this state.
4. To provide for the preparation of teachers.
5. To fix the compensation of such officers and assistants as may be necessary to administer the federal acts and the provisions of this chapter relating to career and technical education and to pay the same and other necessary expenses of administration from any funds appropriated for such purpose.
6. To make studies and investigations relating to career and technical education.

7. To promote and aid in the establishment of schools, departments, or classes, and to cooperate with local communities in the maintenance of career and technical education schools, departments, or classes.
8. To prescribe the qualifications and provide for the certification of teachers, directors, and supervisors.
9. To cooperate with governing bodies of school districts and with organizations and communities in the maintenance of classes for the preparation of teachers, directors, and supervisors of career and technical education, to maintain classes for such purposes under its own direction and control, and to establish and control, by general regulations, the qualifications to be possessed by persons engaged in the training of career and technical education teachers.
10. To coordinate new and existing farm management programs offered by any state agency or entity.
11. To create and expand marketing clubs as adjuncts to new and existing farm management programs.
- ~~12. To administer and supervise the program and all activities of the center for distance education.~~

Approved April 4, 2023

Filed April 5, 2023

## CHAPTER 162

### HOUSE BILL NO. 1348

(Representatives Richter, D. Johnson, Jonas, Schreiber-Beck)

AN ACT to amend and reenact sections 15-20.2-01, 15-20.2-04, 15-20.2-05, 15-20.2-06, and 15-20.2-07 of the North Dakota Century Code, relating to career and technology center boards.

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

**SECTION 1. AMENDMENT.** Section 15-20.2-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **15-20.2-01. Area centers - Definition of terms.**

In this chapter, unless the context otherwise requires:

1. "Area career and technology center" means a program of career and technical education conducted at one or more attendance centers by three or more participating public school districts.
2. "Center board" means the governing board of an area career and technology center.
3. "Participating district" means a public school district whose students are attending an area career and technology center.
4. "School board" means a participating public school district board.
5. "State board" means the state board for career and technical education.
6. "Virtual area career and technology center" means a career and technical education program approved by the department of career and technical education which is used by three or more school districts and which utilizes online or interactive television technology as the primary course content delivery method.

<sup>90</sup> **SECTION 2. AMENDMENT.** Section 15-20.2-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **15-20.2-04. Center boards - Appointment of members - Terms - Compensation - Vacancies.**

1. An area career and technology center must be operated by a center board of not less than five members nor more than a total of one member for each participating district; provided, however, that each participating school district with three hundred or more high school students must be allowed one member for each three hundred high school students or fraction thereof with a

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<sup>90</sup> Section 15-20.2-04 was also amended by section 1 of House Bill No. 1178, chapter 163.

limitation of not more than three members from any one school district. Center board members must be members of the school boards. If a school district has one center board member, that member must be a school board member. If a school district has more than one center board member, one member must be a school board member and any other center board member may be a designee. The terms of office of the members of center boards must be for at least one year and terminate upon the expiration of their terms on their respective school boards. Members are eligible for reappointment to center boards. Center board members shall receive the same compensation and expenses for attending center board meetings or for otherwise engaging in official business for the center as provided in section 15.1-09-06 for members of school boards. Compensation and expenses of center board members must be paid out of center funds.

2. Vacancies on a center board must be filled by the school board whose representation was lost when the vacancy occurred.

**SECTION 3. AMENDMENT.** Section 15-20.2-05 of the North Dakota Century Code is amended and reenacted as follows:

**15-20.2-05. Special board plan for small center or large centers.**

1. If four or fewer school districts comprise an area career and technology center and if enrollment within ~~such~~the school district is insufficient to provide five members in accordance with section 15-20.2-04, the boards of ~~such~~the school district shall agree upon the number and manner of selection of members of the center board and shall submit their plan of selection for approval by the state board pursuant to section 15-20.2-02.
2. If a center board is comprised of twenty or more members, the boards of those school districts may create a representative board with equitable representation from the school districts and shall submit the representative board for approval by the state board under section 15-20.2-02. A majority of the representative board must be school board members.

**SECTION 4. AMENDMENT.** Section 15-20.2-06 of the North Dakota Century Code is amended and reenacted as follows:

**15-20.2-06. Meetings of center boards - Election of officers - Quorum.**

The initial organizational meeting of a center board must be called and conducted by the chairman of the state board, and thereafter a center board shall meet monthly. Virtual area career and technology center boards shall meet at least quarterly. At the next meeting following the annual meeting of the school boards, the officers of a center board for the current school year must be selected. The officers of a center board must be a chairman and a vice chairman, who may not be from the same school district. The chairman shall preside at all meetings of a center board and in the chairman's absence the vice chairman shall preside. Each center board member is entitled to one vote. A majority of the members of a center board constitutes a quorum. Any motion or resolution may be adopted only by a majority vote of the members of the center board.

**SECTION 5. AMENDMENT.** Section 15-20.2-07 of the North Dakota Century Code is amended and reenacted as follows:

**15-20.2-07. Powers and duties of center boards.**

The powers and duties of a center board are as follows:

1. To supervise, manage, and control an area career and technology center established by the cooperating school districts pursuant to this chapter.
2. To provide career and technical education programs approved by the state board.
3. To contract with, employ, ~~and~~or pay personnel to administer the affairs and to teach in the area career and technology center, and to remove for cause any personnel when the interests of the area career and technology center may require it; provided, that personnel employed by a center board shall have the same statutory rights as provided by law for personnel employed by public school districts.
4. To lease, acquire, or purchase career and technical education equipment for an area career and technology center.
5. To lease, acquire, purchase, or sell career and technical education facilities, including real property, for an area career and technology center; provided, that any purchase or sale of real property must first be approved by two-thirds of the school boards of the participating school districts.
6. To receive and administer any private, local, state, or federal funds provided for the operation and maintenance of an area career and technology center.
7. To enter into contracts consistent with the other powers and duties provided for by this chapter.
8. To accept real or personal property available for distribution by the United States or any of its departments or agencies and also to accept federal grants that may be made available in the field of career and technical education.

Approved March 22, 2023

Filed March 23, 2023

## CHAPTER 163

### HOUSE BILL NO. 1178

(Representatives Lefor, Hatlestad, Kasper, McLeod, Novak, O'Brien, Steiner)  
(Senators Bekkedahl, Cleary, Patten, Rummel)

AN ACT to amend and reenact section 15-20.2-04 of the North Dakota Century Code, relating to the appointment of additional community members to career and technology center boards.

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

<sup>91</sup> **SECTION 1. AMENDMENT.** Section 15-20.2-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **15-20.2-04. Center boards - Appointment of members - Terms - Compensation - Vacancies.**

1. ~~An area career and technology center must be operated by a center board of not less than at least five members per. No more than a total of one member for each participating district; provided, however, that each participating school district with three hundred or more high school students must be allowed one member for each three hundred high school students or fraction thereof with a limitation of not no more than three members from any one school district. Center board members must be members of the school boards. The terms of office of the school district members of center boards must be for at least one year and terminate upon the expiration of theirthe member's terms on theirthe member's respective school boards. Members are eligible for reappointment to center boards.~~
2. A center board may appoint up to five community board members in addition to the school district members permissible under subsection 1. The number of community board members appointed under this subsection must be fewer than the number of school district members permissible under subsection 1. Subject to the limitations in this subsection, the center board may appoint:
  - a. No more than one community board member from an institution of higher education, including an institution under the control of the state board of higher education, a North Dakota nonpublic accredited institution of higher education, or a tribally controlled community college.
  - b. No more than one community board member from a parochial or private school.
  - c. One or more community board members from a private sector entity, with each community board member representing a different private sector.
3. The terms of office of the community board members of center boards must be three years.

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<sup>91</sup> Section 15-20.2-04 was also amended by section 2 of House Bill No. 1348, chapter 162.

4. Center board members shall receive the same compensation and expenses for attending center board meetings or for otherwise engaging in official business for the center as provided in section 15.1-09-06 for members of school boards. Compensation and expenses of center board members must be paid out of center funds. ~~Vacancies~~
5. School district member vacancies on a center board must be filled by the school board whose representation was lost when the vacancy occurred. Community member vacancies on a center board may be filled by the center board pursuant to subsection 2.

Approved April 10, 2023

Filed April 11, 2023

## CHAPTER 164

### SENATE BILL NO. 2145

(Senators Davison, Sorvaag)  
(Representatives Bosch, Strinden, Swiontek, Wagner)

AN ACT to amend and reenact section 15-20.4-04 of the North Dakota Century Code, relating to exceptions for postsecondary career school accreditation; to provide for a legislative management study; to provide an expiration date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 15-20.4-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **15-20.4-04. Minimum standards - Exceptions.**

1. ~~A~~ A postsecondary career ~~school~~ school must be accredited by national or regional accrediting agencies recognized by the United States department of education. The board ~~may~~ additionally may require ~~such~~ further evidence and ~~make such~~ further ~~investigation~~ investigate as in ~~its~~ the board's judgment may be necessary. ~~Any~~ A postsecondary career school operating in this state seeking ~~its~~ the school's first authorization to operate may be issued a provisional authorization to operate on an annual basis until the school becomes eligible for accreditation by a recognized accrediting agency. ~~Schools~~ A school issued a provisional authorization to operate must demonstrate a substantial good-faith showing of progress toward ~~such~~ accreditation status. Only upon accreditation ~~shall~~ may a school become eligible for a regular authorization to operate. A school shall give written notification to the board within thirty days of any change to the school's accreditation status.
2. This section does not apply to a postsecondary career ~~school~~ school operating in this state that ~~do~~:
  - a. Does not grant ~~degrees~~ a degree and that ~~offer~~ offers mainly hands-on training in low census occupations, as determined by the board. "Degree" as used in this ~~subsection~~ subdivision means a document that provides evidence or demonstrates completion of a course of instruction that results in the attainment of a rank or level of associate or higher.
  - b. Offers a full-stack software engineering course.

**SECTION 2. LEGISLATIVE MANAGEMENT STUDY - POSTSECONDARY CAREER SCHOOL AUTHORIZATION.** During the 2023-24 interim, the legislative management shall consider studying the statute for the authorization to operate postsecondary career schools. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 3. EXPIRATION DATE.** This Act is effective through August 1, 2025, and after that date is ineffective.

**SECTION 4. EMERGENCY.** Section 1 of this Act is declared to be an emergency measure.

Approved April 10, 2023

Filed April 11, 2023

## CHAPTER 165

### HOUSE BILL NO. 1150

(Representatives Thomas, Heinert, O'Brien, Pyle, Richter, M. Ruby, Schreiber-Beck)  
(Senators Bekkedahl, Meyer, Schaible, Vedaa)

AN ACT to create and enact a new section to chapter 15-39.1 of the North Dakota Century Code, relating to an exception to membership in the teachers' fund for retirement for retired military personnel.

#### 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:

#### **Membership in fund and assessment - Retired military personnel - Exception.**

A teacher may choose not to be a member of the fund and pay the assessment on the teacher's salary under section 15-39.1-09 if the teacher is:

1. Contractually employed in teaching in this state;
2. In the teacher's first year of teaching; and
3. An individual who served at least twenty years in any branch of the armed forces of the United States on full-time active duty and retired with full military retirement benefits before becoming a licensed teacher.

Approved March 23, 2023

Filed March 23, 2023

## CHAPTER 166

### HOUSE BILL NO. 1219

(Representatives Kempenich, Conmy, Kreidt)  
(Senator Schaible)

AN ACT to amend and reenact subsection 9 of section 15-39.1-04, subsection 7 of section 15-39.1-05.2, subsection 2 of section 15-39.1-12.2, sections 15-39.1-15 and 15-39.1-16, subsection 2 of section 15-39.1-18, and sections 15-39.1-19.1, 15-39.1-19.2, and 15-39.1-27 of the North Dakota Century Code, relating to the teachers' fund for retirement board authority and teachers' fund for retirement benefits.

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

**SECTION 1. AMENDMENT.** Subsection 9 of section 15-39.1-04 of the North Dakota Century Code is amended and reenacted as follows:

9. "Retirement annuity" means the payments made by the fund to a member after retirement, ~~these payments beginning on the first or fifteenth day of the month following eligibility for a benefit.~~

**SECTION 2. AMENDMENT.** Subsection 7 of section 15-39.1-05.2 of the North Dakota Century Code is amended and reenacted as follows:

7. Shall, ~~through resolution,~~ inform the state investment board, which is the administrative board of the retirement and investment office, the levels of services, goals, and objectives expected to be provided through the retirement and investment office.

**SECTION 3. AMENDMENT.** Subsection 2 of section 15-39.1-12.2 of the North Dakota Century Code is amended and reenacted as follows:

2. A "qualified domestic relations order" for purposes of this section means any judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, spousal support, or marital property rights to a spouse, former spouse, child, or other dependent of the teacher, which is made pursuant to a North Dakota domestic relations law, and which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a part of the benefits payable to the teacher. A qualified domestic relations order may not require the board to provide any type or form of benefit, or any option, not otherwise provided under the fund, or to provide increased benefits as determined on the basis of actuarial value. However, a qualified domestic relations order may require the payment of benefits at the early retirement date notwithstanding that the teacher has not terminated eligible employment. ~~A qualified domestic relations order must specify:~~
  - a. ~~The name and last-known mailing address of the teacher and the name and mailing address of each alternate payee covered by the order;~~

- b. ~~The amount or percentage of the teacher's benefits to be paid by the board to each alternate payee;~~
- e. ~~The number of payments or period to which the order applies; and~~
- d. ~~Each retirement plan to which the order applies.~~

**SECTION 4. AMENDMENT.** Section 15-39.1-15 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-15. Withdrawal from fund - Return to teaching.**

~~A teacher who has withdrawn from the fund as set forth in this chapter, by returning to teach in a public school or state institution of this state, may, by returning to teach in a public school or state institution of this state, regain service credit for prior teaching by making the required payment. The required payment, if made within five years of returning to teach in covered employment, is the amount that was withdrawn with interest. In all other cases, the purchase cost must be on an actuarial equivalent basis. If the teacher returns to teach in covered employment after June 30, 2008, the teacher becomes a tier two member regardless of whether the teacher repurchases service credit earned while the teacher was a tier one member.~~

**SECTION 5. AMENDMENT.** Section 15-39.1-16 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-16. Option of teachers eligible to receive annuities.**

1. The board shall adopt rules providing for the receipt of retirement benefits in the following optional forms:
  - a. Option one. Upon the death of the teacher, the reduced retirement allowance must be continued throughout the life of, and paid to, the teacher's designated beneficiary named at the time of retirement. If the ~~person~~individual designated to receive the teacher's reduced retirement allowance predeceases the teacher, the reduced retirement allowance must be converted to a single life retirement annuity under which benefit payments, if the ~~person~~individual designated died ~~prior to~~before July 1, 1989, must begin on July 1, 1989, or, if the ~~person~~individual designated dies on or after July 1, 1989, must begin on the first day of the month following the death of the ~~person~~individual designated.
  - b. Option two. Upon the death of the teacher, one-half of the reduced retirement allowance must be continued throughout the life of, and paid to, the teacher's designated beneficiary named at the time of retirement. If the ~~person~~individual designated to receive the teacher's reduced retirement allowance predeceases the teacher, the reduced retirement allowance must be converted to a single life retirement annuity under which benefit payments, if the ~~person~~individual designated died ~~prior to~~before July 1, 1989, must begin on July 1, 1989, or, if the designated beneficiary dies on or after July 1, 1989, must begin on the first day of the month following the death of the ~~person~~individual designated.
  - c. Option three. Upon the death of the teacher within twenty years of the commencement of annuity payments, the payments must be continued for the remainder of the twenty-year period to the teacher's designated

beneficiary. This payment option is available to teachers who retire after July 31, 2003.

- d. Option four. Upon the death of the teacher within ten years of the commencement of annuity payments, the payments must be continued for the remainder of the ten-year period to the teacher's designated beneficiary.
- e. ~~Option five. Level retirement income with social security option, which is available to teachers retiring before social security is payable.~~

~~Option six.~~ Partial lump sum distribution option. A member who is eligible for an unreduced service retirement annuity under section 15-39.1-10 and who retires after July 31, 2003, may make a one-time election to receive a portion of the retirement annuity paid in a lump sum distribution upon retirement, pursuant to rules adopted by the board.

- 4. (1) The eligible member may select a standard service retirement annuity or an optional service retirement annuity described in this ~~sections~~subsection, together with a partial lump sum distribution. ~~The partial lump sum distribution option is not available to members who have selected option five, the level income retirement option.~~ This option is not available to disabled members or beneficiaries of deceased members. The partial lump sum distribution option may be elected only once by a member and may not be elected by a retiree.
- 2. (2) The amount of the partial lump sum distribution under this ~~sections~~subdivision is twelve months of a standard service retirement annuity computed under section 15-39.1-10 and payable at the same time ~~that~~ the first monthly payment of the annuity is paid.
- 3. (3) The service retirement annuity selected by the member must be actuarially reduced to reflect the partial lump sum distribution option selected by the member.
- 4. (4) Before a retiring member selects a partial lump sum distribution under this ~~sections~~subdivision, the fund shall provide a written notice to the member of the amount by which the member's annuity will be reduced because of the selection.
- 2. The amount of the reduced retirement allowance payable upon the exercise of any of these options must be computed upon an actuarial basis through the use of standard actuarial tables and based upon the ages of the teacher and the teacher's designated beneficiary. A member's spouse, if designated as beneficiary, ~~must~~shall consent in writing to the member's choice of benefit payment option for any benefit payments commencing after June 30, 1999. The board may rely on the member's representations about that ~~person's~~member's marital status in determining the member's marital status. The spouse's written consent must be witnessed by a notary or a plan representative. If the spouse does not consent, or cannot be located, the member's annuity benefit must be paid using option two, the fifty percent joint and survivor option.

**SECTION 6. AMENDMENT.** Subsection 2 of section 15-39.1-18 of the North Dakota Century Code is amended and reenacted as follows:

2. The amount of the disability annuity is the amount computed by the retirement formula in section 15-39.1-10 without consideration of age. A member determined eligible for a disability annuity under this section may elect to receive an annuity under any of the options allowed in section 15-39.1-16, except the ~~level retirement income with social security option or the partial lump sum option.~~

**SECTION 7. AMENDMENT.** Section 15-39.1-19.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-19.1. Retired teachers return to active service - Annuities discontinued on resumption of teaching over annual hour limit.**

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 re-employed retiree's contract as follows:
  - (1) Retiree ~~reemployment~~re-employment of nine months or less, annual limit is seven hundred hours;
  - (2) Retiree ~~reemployment~~re-employment of ten months, annual limit is eight hundred hours;
  - (3) Retiree ~~reemployment~~re-employment of eleven months, annual limit is nine hundred hours; or
  - (4) Retiree ~~reemployment~~re-employment 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, professional development, and extracurricular duties do not apply to the annual hour limit. The fund may not collect contributions for these activities.
- 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.
- d. A retired member who returns to teaching shall pay the member contributions required by section 15-39.1-09 on the salary received by the retired member. The member contributions must be included in the retired member's account value and may not be refunded except as provided under subdivision a of subsection 2 of section 15-39.1-19.1 and section 15-39.1-17.
- 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.
- f. A retired teacher who returns to teaching and does not exceed the annual hour limit must be treated as retired for all other purposes under this chapter. A retired teacher may not earn any additional service during the

period of re-employment. The retired teacher's benefits may not be adjusted to reflect changes in the retired teacher's age or final average monthly salary at the end of the period of re-employment, any optional form of payment elected under section 15-39.1-16 remains effective during and after the period of re-employment, and additional benefits normally available to an active member, such as disability benefits, are not available to a retired teacher re-employed under this section.

- g. A retired teacher who returns to teaching and exceeds the annual hour limit must immediately notify the fund office in writing. Failure to notify the fund office results in the loss of one month's annuity benefit for the member. The retired member's monthly benefit must be discontinued the first of the month following the date the member reaches the annual hour limit.
2. Upon the retired teacher's subsequent retirement of a member who returns to teach and whose monthly benefit is discontinued, the member's benefit must be resumed as follows:
  - a. ~~If the teacher subsequently retires with less than two years of additional earned credited service, the teacher's contributions paid to the fund after the member's benefit was suspended must be refunded in accordance with section 15-39.1-20 and the teacher is entitled to receive the discontinued annuity, plus any postretirement benefit adjustments granted during the period of re-employment, the first day of the month following the teacher's re-retirement.~~
  - b. ~~If the teacher subsequently retires with two or more but less than five years of additional earned credited service, the retired person's annuity is the greater of the sum of the discontinued annuity, plus an additional annuity computed according to this chapter based upon years of service and average salaries earned during the period of re-employment plus any postretirement benefit adjustments granted during the period of re-employment, or a recalculated annuity computed according to this chapter based on total years of service credit earned during both employment periods offset by the actuarial value of payments already received. The new annuity is payable the first day of the month following the member's re-retirement.~~
  - c. ~~If the teacher subsequently retires with five or more years of additional earned credited service, the retired person's annuity is the greater of the sum of the discontinued annuity plus an additional annuity based upon years of service and average salaries earned during the period of re-employment plus any postretirement benefit adjustments granted during the period of re-employment, or a recalculated annuity based on all years of service computed under subsection 2 of section 15-39.1-10. The new annuity is payable the first day of the month following the member's re-retirement. The member must have selected the same benefit option as the option selected at initial retirement.~~
  - b. The member's total benefit upon subsequent retirement must equal the original benefit plus the calculated benefit for the return to work period.

- c. The member's benefit attributable to any return to work must be based upon service and earnings attributable to the return to work period only and be calculated as follows:
- (1) The member's calculated benefit must be based on the benefit provisions in effect at subsequent retirement and must include the salary earned during the period of re-employment, total service credits earned after re-employment, and actuarial factors in effect at subsequent retirement.
  - (2) If a member dies during subsequent employment, the member's initial retirement benefit option election applies and the date of death is considered the subsequent retirement date.

**SECTION 8. AMENDMENT.** Section 15-39.1-19.2 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-19.2. Retired teachers return to active service - Critical shortage areas and disciplines -Rules.**

1. A retired teacher who is receiving a retirement annuity under chapter 15-39, 15-39.1, or 15-39.2 may elect to return to teaching without losing any benefits under the provisions of this section or elect to return to teaching under the provisions of section 15-39.1-19.1. To return to teaching under this section, a retired teacher must:
  - a. ReturnShall return to teach in a critical shortage geographical area or subject discipline as determined by the education standards and practices board by rule;
  - b. If retired after January 1, 2001, must have been receiving a retirement annuity for at least one year. A retired teacher may perform noncontracted substitute teaching duties but may not engage in full-time or part-time teaching duties during the one-year separation from service; and
  - c. NotifyShall notify the fund office in writing within thirty days of the retired member's return to covered employment. The retired member's employer must also shall notify the fund office in writing within thirty days of the retired member's return to covered employment.
2. A retired teacher who returns to teaching under this section shall pay the member contributions required by section 15-39.1-09 on the salary of the retired member. The member contributions must be included in the retired member's account value and may not be refunded except as provided under section 15-39.1-17. A retired teacher who returns to teaching under the provisions of this section must be treated as retired for all other purposes under this chapter. A retired teacher may not earn any additional service during the period of re-employment. The retired teacher's benefits may not be adjusted to reflect changes in the retired teacher's age or final average monthly salary at the end of the period of re-employment, any optional form of payment elected under section 15-39.1-16 remains effective during and after the period of re-employment, and additional benefits normally available to an active member, such as disability benefits, are not available to a retired teacher re-employed under this section.

3. A participating employer ~~whethat~~ 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.

**SECTION 9. AMENDMENT.** Section 15-39.1-27 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-27. Computation of years of service.**

In computing the terms of service of a member under this chapter, ~~for a member employed full time, a year is deemed to be one who receives compensation for at least seven hundred seventy-five days of compensation~~ hours in a fiscal year earns one year of service. Employment ~~Employment~~ A member who receives compensation for less than one seven hundred seventy-five days of compensation is not deemed to be a full year but only as the proportion of a year as the number of hours of service earns fractional credit equal to the number of compensated hours employed ~~worked in each a fiscal year of service bears to divided by seven hundred hours. A member may not earn more than one year of service in a fiscal year.~~

Approved April 10, 2023

Filed April 11, 2023

# ELEMENTARY AND SECONDARY EDUCATION

## CHAPTER 167

### HOUSE BILL NO. 1123

(Representative Heinert)  
(Senator Davison)

AN ACT to amend and reenact section 15.1-01-04 of the North Dakota Century Code, relating to the membership, spending authority, and funding for the kindergarten through grade twelve education coordination council.

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

**SECTION 1. AMENDMENT.** Section 15.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **15.1-01-04. Kindergarten through grade twelve education coordination council.**

1. The state board of public school education shall oversee the creation and ongoing operation of the kindergarten through grade twelve education coordination council.
2. The council consists of:
  - a. ~~Three~~Four members of the legislative assembly, ~~one member of the majority party~~two members from each chamber of the legislative assembly, one member selected by the respective majority leader of ~~the~~each chamber, and one member of the ~~minority party~~ selected through collaboration between by the respective minority ~~leaders~~leader of ~~each~~either chamber, and one member selected by the legislative management from the chamber from which the minority leader did not make a selection;
  - b. The governor or the governor's designee;
  - c. The superintendent of public instruction or the superintendent's designee;
  - d. The president of the state board for career and technical education or the president's designee;
  - e. The president of the board of the North Dakota council of educational leaders or the president's designee;
  - f. The president of the board of North Dakota united or the president's designee;

- g. The president of the board of the North Dakota school boards association or the president's designee;
  - h. The president of the board of the North Dakota small organized schools or the president's designee;
  - i. The president of the board of the North Dakota school counselor association or the president's designee; and
  - j. The following gubernatorial appointees:
    - (1) An individual representing the statewide longitudinal data system committee;
    - (2) An individual representing a tribal school interests;
    - (3) An individual employed as a public school administrator;
    - (4) An individual employed as a public school principal;
    - (5) An individual employed as a public elementary school teacher;
    - (6) An individual employed as a public secondary school teacher;
    - (7) A director of a special education unit; and
    - ~~(7)~~(8) A director of a regional education association.
3. The term of office for a member appointed by the governor is four years. The governor may stagger the initial appointments to the council so no more than three members' terms expire in any year.
  4. The council shall select a presiding officer annually from among its members.
  5. A member of the council who is a member of the legislative assembly is entitled to receive per diem compensation at the rate provided under section 54-35-10 for each day performing official duties of the council and to reimbursement for travel and expenses as provided by law, to be paid by the legislative council. A member of the council who is not a state employee is entitled to receive as compensation sixty-two dollars and fifty cents per day and to reimbursement of expenses as provided by law for state officers while attending meetings of the council, to be paid by the state board of public school education. A state employee who is a member of the council is entitled to receive that employee's regular salary and is entitled to reimbursement for mileage and expenses, to be paid by the employing agency.
  6. The council may hire an executive director.
  7. The council shall:
    - a. Assist in the implementation, dissemination, and communication of the statewide strategic vision and evaluate progress toward meeting the identified goals and strategies.
    - b. Perform a continuous review of the effectiveness and efficiency of access and delivery of education services and programs in the state.

- c. Identify opportunities for increased collaboration among state education entities and stakeholders.
  - d. Identify gaps or duplications in education services and programs and provide recommendations for addressing those gaps or duplications.
  - e. Study and evaluate new and emerging educational initiatives and trends and provide recommendations for policy changes to state entities or the legislative assembly if necessary.
  - f. Support the implementation, dissemination, and communication of local or regional educational initiatives and practices, including innovative education programs, on a statewide level.
  - ~~g. Establish a one-stop communication and information hub to provide the public and interested parties with seamless access to state entities that deliver education services and programs.~~
  - h. Develop and utilize subcommittees as needed.
  - ~~i-h.~~ Seek advice and input from interested parties not appointed to the council as needed.
  - ~~j-i.~~ Review the North Dakota learning continuum and provide recommendations to the state board of public school education.
8. The council shall meet at least ~~four~~six times per ~~calendar year~~biennium.
  9. The council shall prepare and present an annual report of council activities to the state board of public school education and to the legislative management.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 168

### SENATE BILL NO. 2254

(Senators Kreun, Beard, Weber)  
(Representatives O'Brien, Richter, Schreiber-Beck)

AN ACT to create and enact a new section to chapter 15.1-02 of the North Dakota Century Code, relating to intervention by the superintendent of public instruction for a chronically low-performing school or school district; to provide a report; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

##### Intervention for chronically low-performing schools - Report.

1. As used in this section, unless context otherwise requires:
  - a. "Chronically low-performing district" means a school district for which auditing and monitoring has revealed a consistent mishandling of processes, reporting, or funds resulting in inadequate educational services for the school district's students and has had chronically low-performing schools within the school district.
  - b. "Chronically low-performing school" means a school identified by the state for comprehensive support and improvement in accordance with the Every Student Succeeds Act [Pub. L. 114-95; 114 Stat. 1177; 20 U.S.C. 28 et seq.] for more than one cycle.
  - c. "Inadequate educational services" include a lack of annual progress in academic achievement, student engagement, resource allocation, teacher effectiveness, chronic absenteeism, and persistent subgroup opportunity gaps.
2. The superintendent of public instruction shall intervene directly when a public school is a chronically low-performing school and when a school district is a chronically low-performing school district. The superintendent of public instruction shall conduct an assessment and a review of past interventions of a chronically low-performing school or school district to identify areas of insufficient performance and develop an improvement plan. An improvement plan under this section may include a directive from the superintendent of public instruction requiring:
  - a. Funds to be held in escrow for the school or school district or spent as designated by the superintendent of public instruction.
  - b. Changes to curriculum, training, instruction, assessment, or the school calendar in the school or school district.

- c. Reassignment or hiring of school or school district staff to fill roles associated with school or school district needs.
3. A memorandum of understanding must be entered between the department of public instruction and a chronically low-performing school or school district.
4. A chronically low-performing school or school district shall complete a school board leadership program as required by the department of public instruction.
5. The superintendent of public instruction shall report annually to the state board of public school education, the education standing committees of the legislative assembly during a legislative session, and an interim committee of the legislative management when the legislative assembly is not in a legislative session regarding the implementation of this section.

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

Approved April 21, 2023

Filed April 24, 2023

## CHAPTER 169

### HOUSE BILL NO. 1231

(Representatives Strinden, J. Johnson, Pyle, Satrom, Schatz)  
(Senators Cleary, Davison, Kreun, Myrdal)

AN ACT to amend and reenact sections 15.1-02-04, 15.1-13-35.1, and 15.1-32-26 of the North Dakota Century Code, relating to the creation of a dyslexia and literacy task force, reading instruction competency for teacher licensure, and the dyslexia screening and intervention program; to repeal section 15.1-32-25 of the North Dakota Century Code, relating to mandatory dyslexia screening; to provide for a legislative management report; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 15.1-02-04 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-02-04. Superintendent of public instruction - Duties - Report. (Effective through June 30, 2023)**

The superintendent of public instruction:

- ~~1. Shall supervise the provision of elementary and secondary education to the students of this state.~~
- ~~2. Shall supervise the establishment and maintenance of schools and provide advice and counsel regarding the welfare of the schools.~~
- ~~3. Shall supervise the development of course content standards.~~
- ~~4. Shall supervise the assessment of students.~~
- ~~5. Shall serve as an ex officio member of the board of university and school lands.~~
- ~~6. Shall keep a complete record of all official acts and appeals.~~
- ~~7. As appropriate, shall determine the outcome of appeals regarding education matters.~~
- ~~8. Shall direct school district annexation, reorganization, and dissolution and employ and compensate personnel necessary to enable the state board of public school education to carry out its powers and duties regarding school district annexation, reorganization, and dissolution.~~
- ~~9. Shall facilitate a process to review and update annually the statewide prekindergarten through grade twelve education strategic vision. The process must include input and participation from a steering committee that includes representatives of all state-level entities receiving state education funding and education stakeholder groups. Each steering committee member entity receiving state education funds shall provide components of the entity's~~

~~strategic plan which are aligned to the statewide strategic vision. The steering committee shall prepare a collaborative report of the strategic plans of each committee member entity receiving state education funds. The superintendent shall provide the collaborative report and any updates to the strategic vision to the legislative management during each interim and to a joint meeting of the education standing committees during each regular legislative session.~~

- ~~10. Shall administer a student loan forgiveness program for individuals teaching at grade levels, in content areas, and in geographical locations identified as having a teacher shortage or critical need.~~
- ~~11. Shall facilitate the development and implementation of a North Dakota learning continuum in collaboration with the department of career and technical education, upon the recommendation of the kindergarten through grade twelve education coordination council.~~
- ~~12. Shall collaborate with workforce development stakeholders and the kindergarten through grade twelve education coordination council to determine how best to integrate computer science and cybersecurity into elementary, middle, and high school curriculum under sections 15.1-21-01 and 15.1-21-02. Before September 1, 2022, the superintendent shall provide a report to the legislative management regarding the outcome of this collaboration.~~

#### **Superintendent of public instruction – Duties. (Effective after June 30, 2023)**

The superintendent of public instruction:

1. Shall supervise the provision of elementary and secondary education to the students of this state.
2. Shall supervise the establishment and maintenance of schools and provide advice and counsel regarding the welfare of the schools.
3. Shall supervise the development of course content standards.
4. Shall supervise the assessment of students.
5. Shall serve as an ex officio member of the board of university and school lands.
6. Shall keep a complete record of all official acts and appeals.
7. As appropriate, shall determine the outcome of appeals regarding education matters.
8. Shall direct school district annexation, reorganization, and dissolution and employ and compensate personnel necessary to enable the state board of public school education to carry out its powers and duties regarding school district annexation, reorganization, and dissolution.
9. Shall facilitate a process to review and update annually the statewide prekindergarten through grade twelve education strategic vision. The process must include input and participation from a steering committee that includes representatives of all state-level entities receiving state education funding and education stakeholder groups. Each steering committee member entity

receiving state education funds shall provide components of the entity's strategic plan which are aligned to the statewide strategic vision. The steering committee shall prepare a collaborative report of the strategic plans of each committee member entity receiving state education funds. The superintendent shall provide the collaborative report and any updates to the strategic vision to the legislative management during each interim and to a joint meeting of the education standing committees during each regular legislative session.

10. Shall facilitate the development and implementation of a North Dakota learning continuum in collaboration with the department of career and technical education, upon the recommendation of the kindergarten through grade twelve education coordination council.
11. Shall appoint a task force in collaboration with the kindergarten through grade twelve education coordination council. The task force shall review all statutes in this code relating to literacy, dyslexia, and related teacher training and report the findings and recommendations of the task force, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 2. AMENDMENT.** Section 15.1-13-35.1 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-13-35.1. Teaching license - Reading instruction competency.**

1. The board shall ensure a candidate for teacher licensure who will be certified to be an early childhood or elementary teacher demonstrates competencies in beginning reading instruction based on scientifically and research-based best practices. Competencies must include the acquisition of knowledge of the essential components of beginning reading instruction, including:
  - a. Phonemic awareness;
  - b. Phonics;
  - c. Fluency;
  - d. Vocabulary;
  - e. Comprehension;
  - f. How to assess student reading ability; ~~and~~
  - g. How to identify and correct reading difficulties;
  - h. Scientifically based, evidence-based, and research-based curricula; and
  - i. The use of systematic direct instruction to ensure all students obtain necessary early reading skills.
2. A prekindergarten, kindergarten, elementary, and special education initial teacher licensure candidate must provide evidence that the candidate meets the competency standards of the components under subsection 1.
3. ~~A prekindergarten through grade twelve and a secondary education~~An early childhood and elementary initial teacher licensure candidate must provide

evidence that the candidate meets the competency standards of the components under subsection 1.

4. A teacher licensure candidate satisfies the requirements of this section if the candidate demonstrates the candidate has received training in competencies related to reading instruction from an accredited or approved program, or demonstrates mastery of the topics provided under subsection 1. The board may issue a provisional license for up to two years to a teacher licensure candidate who does not meet the requirements of this section.

**SECTION 3. AMENDMENT.** Section 15.1-32-26 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-32-26. Dyslexia screening and intervention—Pilot program - Report to legislative management - Professional development.**

1. For purposes of this section:
  - a. "~~Dyslexia~~", "~~dyslexia~~" means a specific learning disability that is ~~neurological~~neurobiological in origin and characterized by difficulties with accurate or fluent recognition of words and poor spelling and decoding abilities, independent of the individual's general intelligence level.
  - b. "~~Specialist trained in dyslexia~~" means an individual who:
    - (1) ~~Has expertise providing training in phonological and phonemic awareness, sound and symbol relationships, alphabet knowledge, rapid naming skills, and encoding and decoding skills;~~
    - (2) ~~Is fluent in the dyslexia intervention process; and~~
    - (3) ~~Has training in identifying dyslexia.~~
2. ~~Beginning with the 2019-20 school year and continuing through the 2022-23 school year, the~~The superintendent of public instruction shall ~~establish and operate a pilot program to provide guidance and recommendations regarding proven strategies in~~ early screening and intervention services for children with risk factors for dyslexia characteristics, including low phonemic awareness.
3. ~~To be eligible to participate in the program, a~~Each school district, ~~regional education association, or special education unit must submit an application to the superintendent which shall:~~
  - a. ~~Identifies a method of screening children for low phonemic awareness and other risk factors for dyslexia;~~
  - b. ~~Provides for the enrollment of children identified as having risk factors for dyslexia in a reading program staffed by specialists trained in dyslexia and multisensory structured language programs; and~~
  - c. ~~Includes a methodology for evaluating the effects of the reading program on the identified risk factors of the child.~~
4. ~~Each grantee selected to participate in the program shall:~~

- a. Provide low-phonemic awareness and other dyslexia risk factor screenings for children under seven years of age through a reading program established under subsection 3; For enrolled children seven years of age and younger, provide a universal screening for dyslexia including core components of phonemic awareness, decoding, and spelling, which must be approved by the superintendent of public instruction;
- b. Include a process to further evaluate identified risk factors;
- c. Describe the intervention services for the identified dyslexia risk factors;
- b-d. Provide reading intervention services to students identified as having dyslexia with dyslexia characteristics;
- e-e. Administer assessments, approved by the superintendent of public instruction, to determine the effectiveness of the program intervention services in improving the reading and learning skills of children enrolled in the program the child; and
- d-f. Provide professional development on dyslexia identification characteristics and interventions related to phonological and phonemic awareness, sound and symbol relationships, alphabet knowledge, rapid naming skills, and encoding and decoding skills, to grant participants appropriate kindergarten through grade three personnel of the school district and special education unit. Professional development may meet the requirements for continuing education credits for license renewal.
4. A school district or special education unit shall provide a universal screener under subdivision a of subsection 3 upon request by a parent, legal guardian, or teacher.
5. The board of each participating grantee shall report annually to the superintendent of public instruction regarding the operation, results, and effectiveness of the pilot program in a manner prescribed by the superintendent. Before July 1, 2024, the superintendent of public instruction shall compile the information and provide a report to the legislative management with a recommendation whether to continue the pilot program beyond the 2022-23 school year regarding dyslexia screening and intervention under this section.

**SECTION 4. REPEAL.** Section 15.1-32-25 of the North Dakota Century Code is repealed.

**SECTION 5. EXPIRATION DATE.** Section 1 of this Act is effective through December 31, 2024, and after that date is ineffective.

Approved May 6, 2023

Filed May 9, 2023

## CHAPTER 170

### HOUSE BILL NO. 1132

(Representatives Pyle, Cory, Ista, Longmuir, Mock, Roers Jones, M. Ruby)  
(Senators Burckhard, Dever, Meyer, Weber)

AN ACT to create and enact a new section to chapter 15.1-07 and a new section to chapter 15.1-29 of the North Dakota Century Code, relating to virtual instruction of military-connected students; and to amend and reenact section 15.1-20-02 of the North Dakota Century Code, relating to compulsory school attendance.

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

**SECTION 1.** A new section to chapter 15.1-07 of the North Dakota Century Code is created and enacted as follows:

**Virtual learning - Military-connected students, students with a medical condition, or students moving out of state - School district policy.**

1. For purposes of this section, a "military-connected student" means a student impacted by a military-directed reassignment or mid-year relocation.
2. A school district may allow a military-connected student, a student with a medical condition unable to physically attend school, or a student moving out of state to enroll early or remain enrolled and attend a school by engaging in virtual instruction.
3. The period of virtual instruction permitted under this section may not extend beyond the current school year.
4. If the board of a school district that operates a physical plant chooses to provide virtual instruction under this section, the board shall adopt a local policy.

**SECTION 2. AMENDMENT.** Section 15.1-20-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-20-02. Compulsory attendance - Exceptions.**

- ~~The provisions of section~~Section 15.1-20-01 ~~does~~ not apply if the person having responsibility for the child demonstrates to the satisfaction of the school board that:
  - The child is in attendance for the same length of time at an approved nonpublic school;
  - The child has completed high school;
  - The child is necessary to the support of the child's family;
  - A multidisciplinary team ~~that includes~~including the child's school district superintendent, the director of the child's special education unit, the child's

classroom teacher, the child's physician, and the child's parent has determined that the child has a disability that renders attendance or participation in a regular or special education program inexpedient or impracticable; or

- e. The child is receiving home education; or
  - f. The child is a military-connected student engaging in virtual instruction under section 1 of this Act at the educational entity of the gaining or losing military installation, a student with a medical condition unable to physically attend school, or a student moving out of state and virtual instruction is allowed by the gaining or losing educational entity.
2. The period of virtual instruction under subdivision f of subsection 1 may not extend beyond the current school year.
  3. A decision by the board of a school district under subsection 1 is appealable to the district court.

**SECTION 3.** A new section to chapter 15.1-29 of the North Dakota Century Code is created and enacted as follows:

**Military-connected student - Average daily membership.**

A military-connected student engaging in virtual instruction under section 1 of this Act qualifies for average daily membership in the school district.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 171

### HOUSE BILL NO. 1522

(Representatives Dyk, Christensen, Timmons, VanWinkle)  
(Senators Beard, Weston)

AN ACT to create and enact a new section to chapter 14-02.4 and a new section to chapter 15.1-06 of the North Dakota Century Code, relating to preferred pronouns and providing accommodations to a transgender student; to provide a penalty; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 14-02.4 of the North Dakota Century Code is created and enacted as follows:

##### **Preferred pronoun - Government entity.**

1. Unless otherwise required by law, a government entity may not adopt a policy requiring or prohibiting:
  - a. An employee's use of an individual's preferred pronoun when addressing or mentioning the individual in work-related communications; or
  - b. The designation of an employee's preferred pronoun in work-related communications.
2. An individual may assert a violation of this section as a claim or defense in a judicial proceeding and is entitled to recover appropriate relief, including reasonable attorney fees and court costs.

**SECTION 2.** A new section to chapter 15.1-06 of the North Dakota Century Code is created and enacted as follows:

##### **Transgender student accommodations.**

1. A board of a school district, public school, or public school teacher may not adopt a policy that requires or prohibits any individual from using a student's preferred gender pronoun.
2. A board of a school district shall establish, with the approval of the parent or legal guardian, a plan for the use of a separate restroom accommodation for a transgender student.
3. A board of a school district or a public school shall prohibit a student from using a restroom that does not coincide with the student's biological sex.
4. Unless otherwise required by law, a school district, public school, or public school teacher may not:
  - a. Adopt a policy concerning a particular student's transgender status without approval from the student's parent or legal guardian; or

- b. Withhold or conceal information about a student's transgender status from the student's parent or legal guardian.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved May 8, 2023

Filed May 9, 2023

## CHAPTER 172

### HOUSE BILL NO. 1494

(Representatives Ista, Beltz, Hager, Heinert, Jonas, Mock, Murphy, O'Brien, Richter)  
(Senators Barta, Braunberger, Hogan)

AN ACT to create and enact a new section to chapter 15.1-07 of the North Dakota Century Code, relating to school meal policies.

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

**SECTION 1.** A new section to chapter 15.1-07 of the North Dakota Century Code is created and enacted as follows:

##### **School districts - Policy - School meals.**

A school district participating in the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.] shall adopt a school meals policy and publish the policy on the school district's website. A school meals policy must ensure:

1. A school may not deny a United States department of agriculture reimbursable meal to a student who requests one, unless the student's parent or guardian has provided written permission to the school to withhold a meal. A school may not serve an alternative meal to a student with an unpaid student meal balance or without funds to pay for a meal. This provision does not apply to an a la carte food item or second meal requested by a student during the same meal period.
2. A school may not dispose of or take away from a child any food that already has been served to the child on account of the child having an unpaid student meal balance or lacking the funds to pay for a meal.
3. A school may not identify or stigmatize a student as receiving a free, reduced-price, or full-price meal, or a meal for which the child lacks funds to pay, including the use of tokens, stickers, stamps, or by placing the child's name on a published list of persons with student meal debt.
4. A school may not limit a student's participation in any school activities, graduation ceremonies, field trips, athletics, activity clubs, or other extracurricular activities or access to materials, technology, or other items provided to students due to an unpaid student meal balance.
5. A school may not require a student to provide services or perform work, including cleaning duties or chores, to pay for school meals debt.
6. A school may contact a student's parent or guardian directly regarding unpaid meals debt or a school meals account without funds to pay for additional meals. A school may require a child deliver a sealed letter addressed to the child's parent or guardian containing a written communication regarding the unpaid school meal debt. The letter may not be distributed to the child in a manner that stigmatizes the child.

7. A school shall adopt policies to encourage or provide an incentive for a parent or guardian of a student to apply for free or reduced meals through the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.], including when a student has unpaid school meals debt.

Approved April 7, 2023

Filed April 10, 2023

## CHAPTER 173

### SENATE BILL NO. 2284

(Senators Schaible, Elkin)  
(Representatives Heinert, Nathe)

AN ACT to create and enact a new section to chapter 15.1-21 of the North Dakota Century Code, relating to permitting private tutors on public school premises; to amend and reenact section 15.1-07-26, subsection 8 of section 15.1-15-02, subsections 2 and 6 of section 15.1-19-10, section 15.1-27-03.1, subsection 4 of section 15.1-27-03.2, section 15.1-27-04.1, and subsection 5 of section 15.1-36-08 of the North Dakota Century Code, relating to school district enrollment, the definition of "probationary teacher", a school district's policy governing possession of a weapon, the definition of "dangerous weapon", modification of weighting factors, transition maximums and an increase in per student payments, and the school construction revolving loan fund; to provide for a legislative management study; to provide a legislative management report; to provide an appropriation; to provide for an exemption; to provide for a transfer; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 15.1-07-26 of the North Dakota Century Code is amended and reenacted as follows:

#### **15.1-07-26. School district demographics and enrollment - ~~Long-term planning process~~Review - Report.**

1. Between January first and June thirtieth of every even-numbered year, the board of each school district ~~shall~~may invite the public to participate in a ~~planning process~~review addressing the effects that demographics ~~might~~and changing enrollment will have on the district in the ensuing three-year and five-year periods, and specifically addressing potential effects on:
  - a. ~~Academic and extracurricular programs~~achievement, as it relates to the local strategic plan, including progress toward state academic goals adopted by the statewide prekindergarten through grade twelve education strategic vision steering committee;
  - b. ~~Instructional and, administrative, and ancillary~~ staffing;
  - c. Co-curricular or extracurricular programs;
  - d. Facility needs and utilization; and
  - d-e. District property tax levies.
2. At the conclusion of the ~~planning process~~review, the board ~~shall~~is encouraged to prepare a report, ~~publish a notice in the official newspaper of the district indicating that the report is available~~make the report available on the district website, and make the report available upon request.

**SECTION 2. AMENDMENT.** Subsection 8 of section 15.1-15-02 of the North Dakota Century Code is amended and reenacted as follows:

8. For purposes of this section, "probationary teacher" means an individual teaching for less than two years in the school district.

<sup>92</sup> **SECTION 3. AMENDMENT.** Subsection 2 of section 15.1-19-10 of the North Dakota Century Code is amended and reenacted as follows:

2. The policy must ~~prohibit~~:
- a. ~~Prohibit~~ the possession of a dangerous weapon or a firearm by a student on school property and at school functions and provide for the punishment of any student found to be in violation. ~~Punishment must include immediate suspension from school and expulsion. A~~
  - b. Require a student who possesses a firearm in violation of this section ~~must~~ be expelled for at least one year. ~~The school district firearms policy must authorize~~
  - c. Authorize the school district superintendent or the school principal, if the school district does not have a superintendent, to modify an expulsion for firearms possession under this section on a case-by-case basis in accordance with criteria established by the board. Before expelling a student, a school board or its designated hearing officer, within ten days of the student's suspension, shall provide the student with a hearing at which time the school board or its designated hearing officer shall take testimony and consider evidence, including the existence of mitigating circumstances. If a designated hearing officer orders that a student be expelled, the student may seek a review of the decision by the school board, based on the record of the expulsion hearing.
  - d. Include a referral mechanism to the criminal justice or juvenile delinquency system for a student who possesses a firearm in violation of this subsection.

<sup>93</sup> **SECTION 4. AMENDMENT.** Subsection 6 of section 15.1-19-10 of the North Dakota Century Code is amended and reenacted as follows:

6. For purposes of this section:
- a. "Dangerous weapon" has the meaning provided in 18 U.S.C. 930(g)(2).
  - b. "Firearm" has the meaning provided in Public Law No. 90-351 [82 Stat. 197; 18 U.S.C. 921].
  - ~~b-c.~~ "School property" includes all land within the perimeter of the school site and all school buildings, structures, facilities, and school vehicles, whether owned or leased by a school district, and the site of any school-sponsored event or activity.

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<sup>92</sup> Section 15.1-19-10 was also amended by section 4 of Senate Bill No. 2284, chapter 173.

<sup>93</sup> Section 15.1-19-10 was also amended by section 3 of Senate Bill No. 2284, chapter 173.

**SECTION 5.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Private tutors.**

A board of a school district may adopt a policy to permit private tutors to provide tutoring services on school premises.

<sup>94</sup> **SECTION 6. 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 an extended educational program in accordance with section 15.1-32-17;
  - b. 0.60 the number of full-time equivalent students enrolled in a summer education program, including a migrant summer education program;
  - c. 0.40 the number of full-time equivalent students who:
    - (1) On a test of English language proficiency approved by the superintendent of public instruction are determined to be least proficient and placed in the first of six categories of proficiency; and
    - (2) Are enrolled in a program of instruction for English language learners;
  - d. 0.28 the number of full-time equivalent students who:
    - (1) On a test of English language proficiency approved by the superintendent of public instruction are determined to be more proficient than students placed in the first of six categories of proficiency and therefore placed in the second of six categories of proficiency; and
    - (2) Are enrolled in a program of instruction for English language learners;
  - e. 0.25 the number of full-time equivalent students under the age of twenty-one enrolled in grades nine through twelve in an alternative high school;
  - f. 0.20 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;
  - g. 0.17 the number of full-time equivalent students enrolled in an early childhood special education program;

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<sup>94</sup> Section 15.1-27-03.1 was also amended by section 7 of Senate Bill No. 2284, chapter 173.

- h. 0.15 the number of full-time equivalent students in grades six through eight enrolled in an alternative education program for at least an average of fifteen hours per week;
- i. 0.10 the number of students enrolled in average daily membership, if the district has fewer than one hundred students enrolled in average daily membership and the district consists of an area greater than two hundred seventy-five square miles [19424.9 hectares], provided that any school district consisting of an area greater than six hundred square miles [155399 hectares] and enrolling fewer than fifty students in average daily membership must be deemed to have an enrollment equal to fifty students in average daily membership;
- j. ~~0.0820.088~~ the number of students enrolled in average daily membership, in order to support the provision of special education services;
- k. 0.07 the number of full-time equivalent students who:
- (1) On a test of English language proficiency approved by the superintendent of public instruction are determined to be more proficient than students placed in the second of six categories of proficiency and therefore placed in the third of six categories of proficiency;
  - (2) Are enrolled in a program of instruction for English language learners; and
  - (3) Have not been in the third of six categories of proficiency for more than three years;
- l. 0.025 the number of 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.];
- m. 0.002 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;
- n. ~~0.601.0~~ the number of students by which the district's September tenth enrollment report exceeds the number of students in the prior year's average daily membership increasing the factor annually by 0.10, not to exceed 1.00; and
- o. For districts paid based on September tenth enrollment in the prior year, ~~0.500.70~~ the number of students determined by deducting the number of students in the prior year's September tenth enrollment from the prior year's average daily membership, increasing the factor annually by 0.10, not to exceed 1.00. If the prior year's September tenth enrollment exceeds the prior year's average daily membership, then a deduction of 0.50 the number of excess students, increasing the factor annually by 0.10, not to exceed 1.00.

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>95</sup> **SECTION 7. AMENDMENT.** Subdivision o of subsection 1 of section 15.1-27-03.1 of the North Dakota Century Code is amended and reenacted as follows:

- o. For districts paid based on September tenth enrollment in the prior year, ~~0.701.00~~ the number of students determined by deducting the number of students in the prior year's September tenth enrollment from the prior year's average daily membership, ~~increasing the factor annually by 0.10, not to exceed 1.00.~~ If the prior year's September tenth enrollment exceeds the prior year's average daily membership, then a deduction of ~~0.501.00~~ the number of excess students, ~~increasing the factor annually by 0.10, not to exceed 1.00.~~

<sup>96</sup> **SECTION 8. AMENDMENT.** Subsection 4 of section 15.1-27-03.2 of the North Dakota Century Code is amended and reenacted as follows:

4. The school district size weighting factor determined under this section and multiplied by a school district's weighted average daily membership equals the district's weighted student units. For ~~the 2022-23 school year, for~~ school districts that operate multiple kindergarten through grade twelve buildings at least ~~nineteen~~fourteen miles [~~30.58~~22.53 kilometers] apart, or multiple buildings at least ~~nineteen~~fourteen miles [~~30.58~~22.53 kilometers] apart with no replicated grades, the superintendent of public instruction shall determine the school size weighting factor for each building separately, with no adjustment for elementary schools. The superintendent of public instruction shall multiply the school size weighting factor for each building by the school district's weighted average daily membership to determine each building's weighted student units. The superintendent of public instruction shall combine the weighted student units of all buildings in the school district to determine the school district's weighted student units.

<sup>97</sup> **SECTION 9. AMENDMENT.** Subsection 4 of section 15.1-27-03.2 of the North Dakota Century Code is amended and reenacted as follows:

4. The school district size weighting factor determined under this section and multiplied by a school district's weighted average daily membership equals the district's weighted student units. For for school districts that operate multiple kindergarten through grade twelve buildings at least ~~fourteen~~ miles [22.53 kilometers] apart, or multiple buildings at least ~~fourteen~~ miles [22.53 kilometers] apart with no replicated grades, the superintendent of public instruction shall determine the school size weighting factor for each building separately, ~~with no adjustment for elementary schools~~. The superintendent of public instruction shall multiply the school size weighting factor for each building by the school district's weighted average daily membership to determine each building's weighted student units. The superintendent of public

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<sup>95</sup> Section 15.1-27-03.1 was also amended by section 6 of Senate Bill No. 2284, chapter 173.

<sup>96</sup> Section 15.1-27-03.2 was also amended by section 9 of Senate Bill No. 2284, chapter 173.

<sup>97</sup> Section 15.1-27-03.2 was also amended by section 8 of Senate Bill No. 2284, chapter 173.

instruction shall combine the weighted student units of all buildings in the school district to determine the school district's weighted student units.

<sup>98</sup> **SECTION 10. AMENDMENT.** Section 15.1-27-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-04.1. Baseline funding - Establishment - Determination of state aid. (Effective through June 30, 2025)**

1. To determine the amount of state aid payable to each district, the superintendent of public instruction shall establish each district's baseline funding. A district's baseline funding consists of:
  - a. All state aid received by the district in accordance with chapter 15.1-27 during the 2018-19 school year;
  - b. An amount equal to the property tax deducted by the superintendent of public instruction to determine the 2018-19 state aid payment;
  - c. An amount equal to seventy-five percent of the revenue received by the school district during the 2017-18 school year for the following revenue types:
    - (1) Revenue 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;
    - (2) Mineral revenue received by the school district through direct allocation from the state treasurer and not 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;
    - (3) Tuition 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, with the exception of revenue received specifically for the operation of an educational program provided at a residential treatment facility, tuition received for the provision of an adult farm management program, and beginning in the 2021-22 school year, seventeen percent of tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid, and an additional seventeen percent of tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid each school year thereafter, until the 2024-25 school year when sixty-eight percent of tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid must be excluded from the tuition calculation under this paragraph;

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<sup>98</sup> Section 15.1-27-04.1 was also amended by section 18 of Senate Bill No. 2013, chapter 45, and section 25 of Senate Bill No. 2015, chapter 47.

- (4) Revenue from payments in lieu of taxes on the distribution and transmission of electric power;
    - (5) Revenue from payments in lieu of taxes on electricity generated from sources other than coal; and
    - (6) Revenue from the leasing of land acquired by the United States for which compensation is allocated to the state under 33 U.S.C. 701(c) (3);
  - d. An amount equal to the total revenue received by the school district during the 2017-18 school year for the following revenue types:
    - (1) Mobile home tax revenue;
    - (2) Telecommunications tax revenue; and
    - (3) Revenue from payments in lieu of taxes and state reimbursement of the homestead credit and disabled veterans credit; and
  - e. Beginning with the 2020-21 school year, the superintendent shall reduce the baseline funding for any school district that becomes an elementary district pursuant to section 15.1-07-27 after the 2012-13 school year. The reduction must be proportional to the number of weighted student units in the grades that are offered through another school district relative to the total number of weighted student units the school district offered in the year before the school district became an elementary district. The reduced baseline funding applies to the calculation of state aid for the first school year in which the school district becomes an elementary district and for each year thereafter. For districts that become an elementary district prior to the 2020-21 school year, the superintendent shall use the reduced baseline funding to calculate state aid for the 2020-21 school year and for each year thereafter.
2.
  - a. The superintendent shall divide the district's baseline funding determined in subsection 1 by the district's 2017-18 weighted student units to determine the district's baseline funding per weighted student unit.
  - b. For any school district that becomes an elementary district pursuant to section 15.1-07-27 after the 2017-18 school year, the superintendent shall adjust the district's baseline funding per weighted student unit used to calculate state aid. The superintendent shall divide the district's baseline funding determined in subsection 1 by the district's weighted student units after the school district becomes an elementary district to determine the district's adjusted baseline funding per weighted student unit. The superintendent shall use the district's adjusted baseline funding per weighted student unit in the calculation of state aid for the first school year in which the school district becomes an elementary district and for each year thereafter.
  - c. Beginning with the 2021-22 school year and for each school year thereafter, the superintendent shall reduce the district's baseline funding per weighted student unit. Each year the superintendent shall calculate the amount by which the district's baseline funding per weighted student unit exceeds the payment per weighted student unit provided in subsection 3.

The superintendent shall reduce the district's baseline funding per weighted student unit by fifteen percent of the amount by which the district's baseline funding per weighted student unit exceeds the payment per weighted student unit for the 2021-22 school year. For each year thereafter, the reduction percentage is increased by an additional fifteen percent. However, the district's baseline funding per weighted student unit, after the reduction, may not be less than the payment per weighted student unit provided in subsection 3.

3. a. For the ~~2021-22~~2023-24 school year, the superintendent shall calculate state aid as the greater of:
  - (1) The district's weighted student units multiplied by ten thousand ~~one hundred thirty-six~~six hundred forty-six dollars;
  - (2) One hundred two percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units, not to exceed the district's 2017-18 baseline weighted student units, plus any weighted student units in excess of the 2017-18 baseline weighted student units multiplied by ten thousand ~~one hundred thirty-six~~six hundred forty-six dollars; or
  - (3) The district's baseline funding as established in subsection 1 less the amount in paragraph 1, with the difference reduced by ~~fifteen~~forty-five percent and then the difference added to the amount determined in paragraph 1.
- b. For the ~~2022-23~~2024-25 school year and each school year thereafter, the superintendent shall calculate state aid as the greater of:
  - (1) The district's weighted student units multiplied by ~~ten~~eleven thousand ~~two hundred thirty-seven~~seventy-two dollars;
  - (2) One hundred two percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units, not to exceed the district's 2017-18 baseline weighted student units, plus any weighted student units in excess of the 2017-18 baseline weighted student units multiplied by ~~ten~~eleven thousand ~~two hundred thirty-seven~~seventy-two dollars; or
  - (3) The district's baseline funding as established in subsection 1 less the amount in paragraph 1, with the difference reduced by ~~thirty~~sixty percent for the ~~2022-23~~2024-25 school year and the reduction percentage increasing by fifteen percent each school year thereafter until the difference is reduced to zero, and then the difference added to the amount determined in paragraph 1.
- c. ~~The superintendent also shall adjust state aid determined in this subsection to ensure the amount does not exceed the transition maximum as follows:~~
  - (1) ~~For the 2021-22 school year, the transition maximum rate is one hundred ten percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units from the previous school year.~~

- (2) For the 2022-23 school year, the transition maximum rate is one hundred ten percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units from the previous school year.
  - (3) For the 2023-24 school year, the transition maximum rate is one hundred ten percent of the district's baseline funding per weighted student unit, as established in subsection 2, plus twenty percent of the difference between the rate under paragraph 1 of subdivision b of this subsection and one hundred ten percent of the district's baseline funding per weighted student unit. The transition maximum is determined by multiplying the transition maximum rate, which may not exceed the rate under paragraph 1 of subdivision b of this subsection, by the district's weighted student units from the previous school year.
  - (4) For the 2024-25 school year, the transition maximum rate is one hundred ten percent of the district's baseline funding per weighted student unit, as established in subsection 2, plus forty percent of the difference between the rate under paragraph 1 of subdivision b of this subsection and one hundred ten percent of the district's baseline funding per weighted student unit. The transition maximum is determined by multiplying the transition maximum rate, which may not exceed the rate under paragraph 1 of subdivision b of this subsection, by the district's weighted student units from the previous school year.
  - (5) For the 2025-26 school year, the transition maximum rate is one hundred ten percent of the district's baseline funding per weighted student unit, as established in subsection 2, plus sixty percent of the difference between the rate under paragraph 1 of subdivision b of this subsection and one hundred ten percent of the district's baseline funding per weighted student unit. The transition maximum is determined by multiplying the transition maximum rate, which may not exceed the rate under paragraph 1 of subdivision b of this subsection, by the district's weighted student units from the previous school year.
  - (6) For the 2026-27 school year, the transition maximum rate is one hundred ten percent of the district's baseline funding per weighted student unit, as established in subsection 2, plus eighty percent of the difference between the rate under paragraph 1 of subdivision b of this subsection and one hundred ten percent of the district's baseline funding per weighted student unit. The transition maximum is determined by multiplying the transition maximum rate, which may not exceed the rate under paragraph 1 of subdivision b of this subsection, by the district's weighted student units from the previous school year.
4. After determining the product in accordance with subsection 3, the superintendent of public instruction shall:
    - a. Subtract an amount equal to sixty mills multiplied by the taxable valuation of the school district, except the amount in dollars subtracted for purposes of this subdivision may not exceed the previous year's amount in dollars subtracted for purposes of this subdivision by more than twelve percent, adjusted pursuant to section 15.1-27-04.3; and

- b. Subtract an amount equal to seventy-five percent of all revenue types listed in subdivisions c and d of subsection 1. Before determining the deduction for seventy-five percent of all revenue types, the superintendent of public instruction shall adjust revenues as follows:
    - (1) Tuition revenue shall be adjusted as follows:
      - (a) In addition to deducting tuition revenue received specifically for the operation of an educational program provided at a residential treatment facility, tuition revenue received for the provision of an adult farm management program, and tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid as directed each school year in paragraph 3 of subdivision c of subsection 1, the superintendent of public instruction also shall reduce the total tuition reported by the school district by the amount of tuition revenue received for the education of students not residing in the state and for which the state has not entered a cross-border education contract; and
      - (b) The superintendent of public instruction also shall reduce the total tuition reported by admitting school districts meeting the requirements of subdivision e of subsection 2 of section 15.1-29-12 by the amount of tuition revenue received for the education of students residing in an adjacent school district.
    - (2) After adjusting tuition revenue as provided in paragraph 1, the superintendent shall reduce all remaining revenues from all revenue types by the percentage of mills levied in ~~2020~~2022 by the school district for sinking and interest relative to the total mills levied in ~~2020~~2022 by the school district for all purposes.
5. The amount remaining after the computation required under subsection 4 is the amount of state aid to which a school district is entitled, subject to any other statutory requirements or limitations.
  6. On or before June thirtieth of each year, the school board shall certify to the superintendent of public instruction the final average daily membership for the current school year.
  7. For purposes of the calculation in subsection 4, each county auditor, in collaboration with the school districts, shall report the following to the superintendent of public instruction on an annual basis:
    - a. The amount of revenue received by each school district in the county during the previous school year for each type of revenue identified in subdivisions c and d of subsection 1;
    - b. The total number of mills levied in the previous calendar year by each school district for all purposes; and
    - c. The number of mills levied in the previous calendar year by each school district for sinking and interest fund purposes.

**Baseline funding - Establishment - Determination of state aid. (Effective after June 30, 2025)**

1. To determine the amount of state aid payable to each district, the superintendent of public instruction shall establish each district's baseline funding. A district's baseline funding consists of:
  - a. All state aid received by the district in accordance with chapter 15.1-27 during the 2018-19 school year;
  - b. An amount equal to the property tax deducted by the superintendent of public instruction to determine the 2018-19 state aid payment;
  - c. An amount equal to seventy-five percent of the revenue received by the school district during the 2017-18 school year for the following revenue types:
    - (1) Revenue 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;
    - (2) Mineral revenue received by the school district through direct allocation from the state treasurer and not 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;
    - (3) Tuition 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, with the exception of revenue received specifically for the operation of an educational program provided at a residential treatment facility, tuition received for the provision of an adult farm management program, and beginning in the 2025-26 school year, eighty-five percent of tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid, until the 2026-27 school year, and each school year thereafter, when all tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid must be excluded from the tuition calculation under this paragraph;
    - (4) Revenue from payments in lieu of taxes on the distribution and transmission of electric power;
    - (5) Revenue from payments in lieu of taxes on electricity generated from sources other than coal; and
    - (6) Revenue from the leasing of land acquired by the United States for which compensation is allocated to the state under 33 U.S.C. 701(c) (3); and
  - d. An amount equal to the total revenue received by the school district during the 2017-18 school year for the following revenue types:

- (1) Mobile home tax revenue;
  - (2) Telecommunications tax revenue; and
  - (3) Revenue from payments in lieu of taxes and state reimbursement of the homestead credit and disabled veterans credit.
- e. Beginning with the 2020-21 school year, the superintendent shall reduce the baseline funding for any school district that becomes an elementary district pursuant to section 15.1-07-27 after the 2012-13 school year. The reduction must be proportional to the number of weighted student units in the grades that are offered through another school district relative to the total number of weighted student units the school district offered in the year before the school district became an elementary district. The reduced baseline funding applies to the calculation of state aid for the first school year in which the school district becomes an elementary district and for each year thereafter. For districts that become an elementary district prior to the 2020-21 school year, the superintendent shall use the reduced baseline funding to calculate state aid for the 2020-21 school year and for each year thereafter.
2. a. The superintendent shall divide the district's baseline funding determined in subsection 1 by the district's 2017-18 weighted student units to determine the district's baseline funding per weighted student unit.
  - b. For any school district that becomes an elementary district pursuant to section 15.1-07-27 after the 2017-18 school year, the superintendent shall adjust the district's baseline funding per weighted student unit used to calculate state aid. The superintendent shall divide the district's baseline funding determined in subsection 1 by the district's weighted student units after the school district becomes an elementary district to determine the district's adjusted baseline funding per weighted student unit. The superintendent shall use the district's adjusted baseline funding per weighted student unit in the calculation of state aid for the first school year in which the school district becomes an elementary district and for each year thereafter.
  - c. Beginning with the 2021-22 school year and for each school year thereafter, the superintendent shall reduce the district's baseline funding per weighted student unit. Each year the superintendent shall calculate the amount by which the district's baseline funding per weighted student unit exceeds the payment per weighted student unit provided in subsection 3. The superintendent shall reduce the district's baseline funding per weighted student unit by fifteen percent of the amount by which the district's baseline funding per weighted student unit exceeds the payment per weighted student unit for the 2021-22 school year. For each year thereafter, the reduction percentage is increased by an additional fifteen percent. However, the district's baseline funding per weighted student unit, after the reduction, may not be less than the payment per weighted student unit provided in subsection 3.
3. a. For the ~~2021-22~~2023-24 school year, the superintendent shall calculate state aid as the greater of:

- (1) The district's weighted student units multiplied by ten thousand ~~one hundred thirty-six~~six hundred forty-six dollars;
  - (2) One hundred two percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units, not to exceed the district's 2017-18 baseline weighted student units, plus any weighted student units in excess of the 2017-18 baseline weighted student units multiplied by ten thousand ~~one hundred thirty-six~~six hundred forty-six dollars; or
  - (3) The district's baseline funding as established in subsection 1 less the amount in paragraph 1, with the difference reduced by ~~fifteen~~forty-five percent and then the difference added to the amount determined in paragraph 1.
- b. For the ~~2022-23~~2024-25 school year and each school year thereafter, the superintendent shall calculate state aid as the greater of:
- (1) The district's weighted student units multiplied by ~~ten~~eleven thousand ~~two hundred thirty-seven~~seventy-two dollars;
  - (2) One hundred two percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units, not to exceed the district's 2017-18 baseline weighted student units, plus any weighted student units in excess of the 2017-18 baseline weighted student units multiplied by ~~ten~~eleven thousand ~~two hundred thirty-seven~~seventy-two dollars; or
  - (3) The district's baseline funding as established in subsection 1 less the amount in paragraph 1, with the difference reduced by ~~thirty-six~~sixty percent for the ~~2022-23~~2024-25 school year and the reduction percentage increasing by fifteen percent each school year thereafter until the difference is reduced to zero, and then the difference added to the amount determined in paragraph 1.
- c. ~~The superintendent also shall adjust state aid determined in this subsection to ensure the amount does not exceed the transition maximum as follows:~~
- (1) ~~For the 2021-22 school year, the transition maximum rate is one hundred ten percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units from the previous school year.~~
  - (2) ~~For the 2022-23 school year, the transition maximum rate is one hundred ten percent of the district's baseline funding per weighted student unit, as established in subsection 2, multiplied by the district's weighted student units from the previous school year.~~
  - (3) ~~For the 2023-24 school year, the transition maximum rate is one hundred ten percent of the district's baseline funding per weighted student unit, as established in subsection 2, plus twenty percent of the difference between the rate under paragraph 1 of subdivision b of this subsection and one hundred ten percent of the district's baseline funding per weighted student unit. The transition maximum is~~

determined by multiplying the transition maximum rate, which may not exceed the rate under paragraph 1 of subdivision b of this subsection, by the district's weighted student units from the previous school year.

- (4) For the 2024-25 school year, the transition maximum rate is one hundred ten percent of the district's baseline funding per weighted student unit, as established in subsection 2, plus forty percent of the difference between the rate under paragraph 1 of subdivision b of this subsection and one hundred ten percent of the district's baseline funding per weighted student unit. The transition maximum is determined by multiplying the transition maximum rate, which may not exceed the rate under paragraph 1 of subdivision b of this subsection, by the district's weighted student units from the previous school year.
  - (5) For the 2025-26 school year, the transition maximum rate is one hundred ten percent of the district's baseline funding per weighted student unit, as established in subsection 2, plus sixty percent of the difference between the rate under paragraph 1 of subdivision b of this subsection and one hundred ten percent of the district's baseline funding per weighted student unit. The transition maximum is determined by multiplying the transition maximum rate, which may not exceed the rate under paragraph 1 of subdivision b of this subsection, by the district's weighted student units from the previous school year.
  - (6) For the 2026-27 school year, the transition maximum rate is one hundred ten percent of the district's baseline funding per weighted student unit, as established in subsection 2, plus eighty percent of the difference between the rate under paragraph 1 of subdivision b of this subsection and one hundred ten percent of the district's baseline funding per weighted student unit. The transition maximum is determined by multiplying the transition maximum rate, which may not exceed the rate under paragraph 1 of subdivision b of this subsection, by the district's weighted student units from the previous school year.
4. After determining the product in accordance with subsection 3, the superintendent of public instruction shall:
    - a. Subtract an amount equal to sixty mills multiplied by the taxable valuation of the school district; and
    - b. Subtract an amount equal to seventy-five percent of all revenue types listed in subdivisions c and d of subsection 1. Before determining the deduction for seventy-five percent of all revenue types, the superintendent of public instruction shall adjust revenues as follows:
      - (1) Tuition revenue shall be adjusted as follows:
        - (a) In addition to deducting tuition revenue received specifically for the operation of an educational program provided at a residential treatment facility, tuition revenue received for the provision of an adult farm management program, and tuition received under an agreement to educate students from a school district on an air force base with funding received through federal impact aid as directed each school year in paragraph 3 of subdivision c of subsection 1, the superintendent of public instruction also shall

reduce the total tuition reported by the school district by the amount of tuition revenue received for the education of students not residing in the state and for which the state has not entered a cross-border education contract; and

- (b) The superintendent of public instruction also shall reduce the total tuition reported by admitting school districts meeting the requirements of subdivision e of subsection 2 of section 15.1-29-12 by the amount of tuition revenue received for the education of students residing in an adjacent school district.

(2) After adjusting tuition revenue as provided in paragraph 1, the superintendent shall reduce all remaining revenues from all revenue types by the percentage of mills levied in ~~2020~~2022 by the school district for sinking and interest relative to the total mills levied in ~~2020~~2022 by the school district for all purposes.

5. The amount remaining after the computation required under subsection 4 is the amount of state aid to which a school district is entitled, subject to any other statutory requirements or limitations.
6. On or before June thirtieth of each year, the school board shall certify to the superintendent of public instruction the final average daily membership for the current school year.
7. For purposes of the calculation in subsection 4, each county auditor, in collaboration with the school districts, shall report the following to the superintendent of public instruction on an annual basis:
  - a. The amount of revenue received by each school district in the county during the previous school year for each type of revenue identified in subdivisions c and d of subsection 1;
  - b. The total number of mills levied in the previous calendar year by each school district for all purposes; and
  - c. The number of mills levied in the previous calendar year by each school district for sinking and interest fund purposes.

<sup>99</sup> **SECTION 11. AMENDMENT.** Subsection 5 of section 15.1-36-08 of the North Dakota Century Code is amended and reenacted as follows:

5. If the superintendent of public instruction approves the loan, the Bank of North Dakota shall issue a loan from the school construction assistance revolving loan fund. For a loan made under this section:
  - a. ~~The~~ the school construction project totals less than seventy-five million dollars, ~~the~~ the maximum loan amount for which a school district may qualify is ~~ten~~fifteen million dollars. However, if a school district's unobligated general fund balance on the preceding June thirtieth exceeds the limitation under section 15.1-27-35.3, the loan amount under this section may not exceed eighty percent of the project's cost up to a maximum loan amount of ~~eight~~twelve million dollars;

<sup>99</sup> Section 15.1-36-08 was also amended by section 1 of House Bill No. 1161, chapter 197, and section 12 of Senate Bill No. 2233, chapter 95.

- b. If the school construction project totals seventy-five million dollars or more, the maximum loan amount for which a school district may qualify is thirty million dollars. However, if a school district's unobligated general fund balance on the preceding June thirtieth exceeds the limitation under section 15.1-27-35.3, the loan amount under this section may not exceed eighty percent of the project's cost up to a maximum loan amount of twenty-four million dollars;
- c. The term of the loan is twenty years, unless the board of the school district requests a shorter term in the written loan application; and
- e.d. The interest rate of the loan may not exceed two percent per year.
- e. A district with a school construction loan secured on the open bond market may apply to refinance the loan when callable with the school construction assistance revolving loan fund under this subsection.
- f. A district that qualifies for a loan under subdivision a, which was approved for a loan of up to ten million dollars for a construction project bid after January 1, 2021, and before June 30, 2024, may apply for a loan in an amount equal to the difference between fifteen million dollars and the amount of the approved loan. Districts qualifying under this subdivision may submit an application for additional funding to the superintendent of public instruction before August 1, 2023.
- g. A district that qualifies for a loan under subdivision b, which was approved for a loan of up to ten million dollars for a construction project bid after January 1, 2021, and before June 30, 2024, may apply for a loan in an amount equal to the difference between thirty million dollars and the amount of the approved loan. Districts qualifying under this subdivision may submit an application for additional funding to the superintendent of public instruction before August 1, 2023.

## **SECTION 12. LEGISLATIVE MANAGEMENT STUDY - COMPOSITION OF THE STATE BOARD OF PUBLIC SCHOOL EDUCATION.**

1. During the 2023-24 interim, the legislative management shall consider studying the composition of the state board of public school education. The study must include:
  - a. An analysis of the state board of public school education boundaries, including a comparison of methodologies for creating the boundaries;
  - b. An analysis of the inclusion of representatives from small, large, urban, and rural schools on the board;
  - c. An evaluation of term limits for board members, including staggering terms to ensure continuity of knowledge;
  - d. An evaluation of the benefits and consequences of requiring the composition of the board to include two school district superintendents, two members of a board of a school district, and two citizens at large;
  - e. An evaluation of the benefits and consequences of requiring a minimum or maximum number of candidates to be submitted to the governor and

permitting the governor to request a new list of potential candidates once; and

- f. An analysis of the role and practices of the county superintendent of schools.
2. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

### **SECTION 13. LEGISLATIVE MANAGEMENT STUDY - SCHOOL CHOICE MODELS.**

1. During the 2023-24 interim, the legislative management shall study school choice models implemented nationally for kindergarten through grade twelve schools, including charter schools, magnet schools, private schools, voucher systems, and home schools. The study must include input from stakeholders, including public and nonpublic teachers and administrators, parents of students, representatives from the department of public instruction, a representative from the governor's office, and representatives from regional education associations. The study also must include the following, supported by quantitative data:
  - a. A review of regulations implemented by state regulatory agencies to ensure accountability for various school choice models;
  - b. A comparison of nontraditional school choice models implemented by other states;
  - c. An analysis of the impact of enrollment fluctuation, including the impact on state aid;
  - d. A review of the state's student population and enrollment capacity and tuition costs of nonpublic schools; and
  - e. A review of services nonpublic schools are able to offer students with special needs.
2. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 14. LEGISLATIVE MANAGEMENT STUDY - TEACHER SHORTAGE AND MILITARY FAMILY WORKFORCE.** During the 2023-24 interim, the legislative management shall consider studying employer recruitment needs, applicable state regulations, and benefit options for kindergarten through grade twelve educators within the state, including potential barriers to military personnel and spouses teaching in the classroom. The study should identify immediate and long-term public policy strategies to address teacher shortages and support for military families and spouses. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 15. LEGISLATIVE MANAGEMENT STUDY - VIRTUAL INSTRUCTION IN LIEU OF STORM DAYS.** During the 2023-24 interim, the legislative management shall consider studying the feasibility, desirability, and impact

of replacing storm days with virtual instruction days. The study must include input from the department of public instruction, public school administrators and teachers, and other stakeholders. The study also must include a review of relevant statutes, plans approved by school boards, and current practices related to storm days. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 16. APPROPRIATION - UNIVERSITY OF NORTH DAKOTA - SCHOOL TRANSPORTATION STUDY - ONE-TIME FUNDING.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$5,000, or so much of the sum as may be necessary, to the university of North Dakota for the purpose of a school transportation study, for the biennium beginning July 1, 2023, and ending June 30, 2025. The funding provided in this section is considered a one-time funding item.

**SECTION 17. APPROPRIATION - DEPARTMENT OF PUBLIC INSTRUCTION - GRANTS FOR FREE MEALS.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$6,000,000, or so much of the sum as may be necessary, to the department of public instruction for the purpose of providing grants to school districts to defray the expenses of providing meals, free of charge, for all students enrolled in public or nonpublic school at or below two hundred percent of the federal poverty guideline, for the biennium beginning July 1, 2023, and ending June 30, 2025. The superintendent of public instruction shall develop guidelines and reporting requirements for the grants.

**SECTION 18. APPROPRIATION - PUBLIC INSTRUCTION FUND - DEPARTMENT OF PUBLIC INSTRUCTION - SCIENCE OF READING - REPORT.** There is appropriated out of any moneys in the public instruction 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 public instruction for the purpose of supporting professional learning related to the science of reading and implementing systematic direct literacy instruction, for the biennium beginning July 1, 2023, and ending June 30, 2025. The superintendent of public instruction shall collaborate with the regional education associations to ensure continuity of access to science of reading training opportunities and develop support processes to deepen science of reading implementation. The superintendent of public instruction shall provide quarterly reports to the legislative management on the implementation and effectiveness of this appropriation on improving educational outcomes, including the number of teachers trained, an anticipated timeline of results trends, and any results trends available.

**SECTION 19. APPROPRIATION - PUBLIC INSTRUCTION FUND - DEPARTMENT OF PUBLIC INSTRUCTION - DYSLEXIA IDENTIFICATION TRAINING.** There is appropriated out of any moneys in the public instruction fund in the state treasury, not otherwise appropriated, the sum of \$279,000, or so much of the sum as may be necessary, to the department of public instruction for the purpose of providing training in identification of dyslexia characteristics for the biennium beginning July 1, 2023, and ending June 30, 2025. Each school that instructs students in kindergarten through third grade may apply to the department for funding to train at least one educator in the identification of dyslexia characteristics.

**SECTION 20. APPROPRIATION - PUBLIC INSTRUCTION FUND - DEPARTMENT OF PUBLIC INSTRUCTION - READING LEARNING PLATFORM TRAINING.** There is appropriated out of any moneys in the public instruction fund in the state treasury, not otherwise appropriated, the sum of \$558,000, or so much of

the sum as may be necessary, to the department of public instruction for the purpose of providing training in a reading learning platform approved by the superintendent of public instruction, for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 21. EXEMPTION - TRANSFER - PUBLIC INSTRUCTION FUND.**

Notwithstanding section 54-44.1-11, if, after the superintendent of public instruction complies with all statutory payment obligations imposed for the 2021-23 biennium, any moneys remain in the integrated formula payments line item in subdivision 1 of section 1 of chapter 13 of the 2021 Session Laws, the lesser of \$1,837,000 or the remaining amount must be continued into the 2023-25 biennium and the office of management and budget shall transfer this amount into the public instruction fund for the purpose of funding professional learning related to the science of reading and implementing systematic direct literacy instruction, training in identification of dyslexia characteristics, and reading training for kindergarten through grade three teachers as appropriated in this Act.

**SECTION 22. TRANSFER - FOUNDATION AID STABILIZATION FUND TO SCHOOL CONSTRUCTION ASSISTANCE REVOLVING LOAN FUND.** The office of management and budget shall transfer the sum of \$75,000,000 from the foundation aid stabilization fund to the school construction assistance revolving loan fund during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 23. EFFECTIVE DATE.** Section 7 of this Act becomes effective on July 1, 2024. Section 9 of this Act becomes effective on July 1, 2028.

Approved May 8, 2023

Filed May 9, 2023

## CHAPTER 174

### HOUSE BILL NO. 1386

(Representatives Timmons, Bosch, Jonas, Mock, Murphy, Pyle, Richter, Sanford)  
(Senators Conley, Lemm, Meyer)

AN ACT to create and enact a new section to chapter 15.1-18.2 of the North Dakota Century Code, relating to local boards of school districts' discretion to designate educational professional development content areas; and to amend and reenact section 15.1-07-34 of the North Dakota Century Code, relating to youth behavioral health professional development.

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

**SECTION 1. AMENDMENT.** Section 15.1-07-34 of the North Dakota Century Code is amended and reenacted as follows:

#### **15.1-07-34. Youth behavioral health training to teachers, administrators, and ancillary staff.**

1. Every two years, each school district ~~shall~~may provide a minimum of eight hours of professional development on youth behavioral health to elementary, middle, and high school teachers, and administrators. Each school district ~~shall~~may encourage ancillary and support staff to participate in the professional development. Based on the annual needs assessment of the school district, these hours ~~must~~may be designated from the following categories:
  - a. Trauma;
  - b. Social and emotional learning, including resiliency;
  - c. Suicide prevention;
  - d. Bullying;
  - e. Understanding of the prevalence and impact of youth behavioral health wellness on family structure, education, juvenile services, law enforcement, and health care and treatment providers;
  - f. Knowledge of behavioral health symptoms, and risks;
  - g. Awareness of referral sources and evidence-based strategies for appropriate interventions;
  - h. Other evidence-based strategies to reduce risk factors for students; or
  - i. Current or new evidence-based behavior prevention or mitigation techniques.
2. ~~Each school district shall report the professional development hours required under subsection 1 to the department of public instruction.~~

3. Each school within a district shall designate an individual as a behavioral health resource coordinator.
- 4.3. The superintendent of public instruction shall collaborate with regional education associations to disseminate information, training and instructional materials, and notice of training opportunities to school districts and nonpublic schools. This training must qualify for continuing education credits that count toward license renewal.
- 5.4. The superintendent of public instruction shall maintain the contact information of the behavioral health resource coordinator in each school.

**SECTION 2.** A new section to chapter 15.1-18.2 of the North Dakota Century Code is created and enacted as follows:

**Professional development - Discretionary.**

A school administrator shall recommend professional development content areas appropriate for a public school or school district to the board of a school district. The board of a school district may designate professional development for a school district. Professional development may include content areas, including behavioral, physical, or mental health. Professional development must include the professional development training required under section 15.1-21-12.1.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 175

### HOUSE BILL NO. 1521

(Representatives Murphy, Dyk, Longmuir, Sanford)  
(Senator Meyer)

AN ACT to amend and reenact section 15.1-07-35 of the North Dakota Century Code, relating to alternative curriculum outside of a classroom.

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

**SECTION 1. AMENDMENT.** Section 15.1-07-35 of the North Dakota Century Code is amended and reenacted as follows:

#### **15.1-07-35. School districts - Policy - Alternative curriculum outside the classroom - Participation - Report to legislative management.**

1. For purposes of this section:
  - a. "Educational opportunity" means instruction outside the classroom which meets course content standards, as determined by the superintendent of public instruction. The term includes work-based learning, pre-apprenticeships, apprenticeships, internships, industry certifications, and community programs.
  - b. "Sponsoring entity" means a business, for-profit organization, nonprofit organization, trade association, parent of a student, teacher, or administrator that partners with a school district or governing board of a nonpublic school to provide educational opportunities for students.
2. The superintendent of public instruction shall adopt rules to administer this section.
3. The board of a school district or governing board of a nonpublic school may adopt a policy to allow students enrolled in grades six through twelve to earn course credit through educational opportunities with a sponsoring entity.
4. A policy adopted under this section must provide criteria for:
  - a. The submission, approval, and evaluation of proposals for educational opportunities by sponsoring entities for which a student may earn course credit;
  - b. Sponsoring entity eligibility; and
  - c. Educational opportunity accountability.
5. The board of a school district or governing board of a nonpublic school may ~~accept~~approve a proposal from any eligible sponsoring entity. To be approved, a proposal must:
  - a. Provide increased educational opportunities for students;

- b. Improve the academic success of students; and
  - c. Identify a teacher of record who is employed by the school district or nonpublic school, is licensed under chapter 15.1-18, and has approved the proposal.
- ~~6. Upon approval by the board of a school district or governing board of a nonpublic school, the proposal must be submitted to the kindergarten through grade twelve education coordination council for review and to the superintendent of public instruction for approval before implementation. The superintendent of public instruction shall approve or deny a proposal under this section within ninety days of submission.~~
  - ~~7. If a proposal is denied under subsection 6, the superintendent shall provide the board of a school district or governing board of a nonpublic school with a written explanation, including the reasons for denial.~~
  - ~~8. If a proposal is approved by the superintendent of public instruction, the board of a school district or governing board of a nonpublic school shall implement the proposal and allow students to participate in the educational opportunity for course credit.~~
  - 9-6. Upon approval by the board of a public school district or governing board of a nonpublic school, the proposal must be submitted to the superintendent of public instruction.
  7. Any school district or nonpublic school participating in the program shall provide evaluation data to the superintendent of public instruction at the time and in the manner requested by the superintendent of public instruction.
  - ~~10-8. The superintendent of public instruction may revoke proposal/program approval if the superintendent of public instruction determines the school district, nonpublic school, or sponsoring entity failed to comply with the agreed upon terms of the educational opportunity proposal or the school district policy, or failed to meet the requirements of this section.~~
  - ~~11. If approval of a proposal is revoked under subsection 10, the superintendent of public instruction shall provide a report to the legislative management regarding the revocation.~~
  - 12-9. The superintendent of public instruction shall provide information on the superintendent of public instruction's website and in a biennial reports/report to the legislative management regarding proposals under this section.

Approved March 23, 2023

Filed March 23, 2023

## CHAPTER 176

### SENATE BILL NO. 2223

(Senators Meyer, Burckhard, Kreun)  
(Representatives Hagert, Heinert, M. Ruby)

AN ACT to amend and reenact section 15.1-08-02 of the North Dakota Century Code, relating to the residency requirement for military installation school board members; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 15.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **15.1-08-02. Military installation - School board members - Terms of office - Qualifications - Vacancies.**

The board of a school district formed under this chapter consists of five members. The superintendent of public instruction shall adopt rules providing appointment procedures. The superintendent, after consultation with the base commander and with the approval of the state board of public school education, shall appoint board members in April of each year. The A board members member must reside on be an active member or spouse of an active member of the military installation, or a retired member or spouse of a retired member of the military installation whose permanent residence is located within the state and is no greater than twenty miles from the military installation. An individual who serves on the board of a school district in the district where they reside may not simultaneously be appointed to the board of a military installation. The school board members shall serve three-year terms except ~~that~~ the superintendent of public instruction shall designate two of the members initially appointed to serve two-year terms and two of the members initially appointed to serve one-year terms. If a vacancy occurs, the school board shall appoint an individual to serve for the remainder of the unexpired term.

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

Approved April 4, 2023

Filed April 5, 2023

## CHAPTER 177

### HOUSE BILL NO. 1257

(Representatives Conmy, Dyk, Hanson, Heinert, Murphy, Schneider, Schreiber-Beck, Swiontek)  
(Senators Beard, Braunberger)

AN ACT to amend and reenact sections 15.1-09-08, 16.1-08.1-02.3, and 16.1-08.1-05 of the North Dakota Century Code, relating to campaign contribution statements for candidates seeking a school district office.

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

**SECTION 1. AMENDMENT.** Section 15.1-09-08 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-09-08. School district elections - Candidate filings.**

An individual seeking election to the board of a school district shall prepare and sign a document stating the individual's name and the position for which that individual is a candidate. A candidate shall also file a statement of interests as required by section 16.1-09-02. Whether or not the election is held in conjunction with a statewide election, these documents all statements of interest must be filed with the school district business manager, or mailed to and in the possession of the business manager, by four p.m. of the sixty-fourth day before the election. A candidate shall also file a campaign contribution statement as required by section 16.1-08.1-02.3.

**SECTION 2. AMENDMENT.** Section 16.1-08.1-02.3 of the North Dakota Century Code is amended and reenacted as follows:

##### **16.1-08.1-02.3. Pre-election, supplemental, and year-end campaign disclosure statement requirements for candidates, candidate committees, multicandidate committees, and nonstatewide political parties.**

1. Prior to the thirty-first day before a primary, general, or special election, a candidate or candidate committee formed on behalf of the candidate, a multicandidate political committee, or a political party other than a statewide political party soliciting or accepting contributions shall file a campaign disclosure statement that includes all contributions received from January first through the fortieth day before the election. A candidate whose name is not on the ballot and who is not seeking election through write-in votes, the candidate's candidate committee, and a political party that has not endorsed or nominated any candidate in the election is not required to file a statement under this subsection. The statement may be submitted for filing beginning on the thirty-ninth day before the election. The statement must include:
  - a. For each aggregated contribution from a contributor which totals in excess of two hundred dollars received during the reporting period:
    - (1) The name and mailing address of the contributor;
    - (2) The total amount of the contribution; and

- (3) The date the last contributed amount was received;
  - b. The total of all aggregated contributions from contributors which total in excess of two hundred dollars during the reporting period;
  - c. The total of all contributions received from contributors that contributed two hundred dollars or less each during the reporting period; and
  - d. For a statewide candidate, a candidate committee formed on behalf of a statewide candidate, and a statewide multicandidate committee, the balance of the campaign fund on the fortieth day before the election and the balance of the campaign fund on January first.
2. Beginning on the thirty-ninth day before the election through the day before the election, a person that files a statement under subsection 1 must file a supplemental statement within forty-eight hours of the start of the day following the receipt of a contribution or aggregate contribution from a contributor which is in excess of five hundred dollars. The statement must include:
  - a. The name and mailing address of the contributor;
  - b. The total amount of the contribution received during the reporting period; and
  - c. The date the last contributed amount was received.
3. Prior to February first, a candidate or candidate committee, a multicandidate political committee, or a nonstatewide political party soliciting or accepting contributions shall file a campaign disclosure statement that includes all contributions received and expenditures, by expenditure category, made from January first through December thirty-first of the previous year. The statement may be submitted for filing beginning on January first. The statement must include:
  - a. For a statewide candidate, a candidate committee formed on behalf of a statewide candidate, and a statewide multicandidate committee, the balance of the campaign fund on January first and on December thirty-first;
  - b. For each aggregated contribution from a contributor which totals in excess of two hundred dollars received during the reporting period:
    - (1) The name and mailing address of the contributor;
    - (2) The total amount of the contribution; and
    - (3) The date the last contributed amount was received;
  - c. The total of all aggregated contributions from contributors which total in excess of two hundred dollars during the reporting period;
  - d. The total of all contributions received from contributors that contributed two hundred dollars or less each during the reporting period; and

- e. The total of all other expenditures made during the previous year, separated into expenditure categories.
4. A person required to file a statement under this section, other than a candidate for judicial office, county office, or city office, or school district office, or a candidate committee for a candidate exempted under this subsection, shall report each aggregated contribution from a contributor which totals five thousand dollars or more during the reporting period. For these contributions from individuals, the statement must include the contributor's occupation, employer, and the employer's principal place of business.
  5. A candidate for city office in a city with a population under five thousand and a candidate committee for the candidate are exempt from this section. A candidate for school district office in a school district with a fall enrollment of fewer than one thousand students and a candidate committee for the candidate are exempt from this section.
  6. A candidate for county office and a candidate committee for a candidate for county office shall file statements under this chapter with the county auditor. A candidate for city office who is required to file a statement under this chapter and a candidate committee for such a candidate shall file statements with the city auditor. A candidate for school district office who is required to file a statement under this chapter and a candidate committee for such a candidate shall file statements with the school district business manager. Any other person required to file a statement under this section shall file the statement with the secretary of state.
  7. The filing officer shall assess and collect fees for any reports filed after the filing deadline.
  8. To ensure accurate reporting and avoid commingling of campaign and personal funds, candidates shall use dedicated campaign accounts that are separate from any personal accounts.

**SECTION 3. AMENDMENT.** Section 16.1-08.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-08.1-05. Audit by secretary of state - Requested audits - Reports.**

1. If a substantial irregularity is evident or reasonably alleged, the secretary of state may arrange an audit of any statement filed pursuant to this chapter, to be performed by a certified public accountant of the filer's choice, subject to approval by the secretary of state. If an audit of a statement arranged by the secretary of state under this subsection reveals a violation of this chapter, the candidate, political party, political committee, or other person filing the statement shall pay a fine to the secretary of state equal to two hundred percent of the aggregate of contributions and expenditures found to be in violation or an amount sufficient to pay the cost of the audit, whichever is greater. If an audit of a statement arranged by the secretary of state under this subsection does not reveal a violation of this chapter, the cost of the audit must be paid for by the secretary of state.
2. If a substantial irregularity is reasonably alleged, the secretary of state may arrange an audit of any statement filed pursuant to this chapter, performed by a certified public accountant of the filer's choice, subject to approval by the secretary of state, upon written request by any interested party made to the

secretary of state within thirty days following receipt of a statement by the secretary of state. The request must be made in writing, recite a substantial irregularity and a lawful reason for requesting an audit, and be accompanied by a bond in an amount established by the secretary of state sufficient to pay the cost of the audit. If an audit of a statement arranged by the secretary of state under this subsection reveals a violation of this chapter, the candidate, political party, or political committee filing the statement shall pay a fine to the secretary of state equal to two hundred percent of the aggregate of contributions and expenditures found to be in violation or an amount sufficient to pay the cost of the audit, whichever is greater, and the bond shall be returned to the person submitting it. If an audit of a statement arranged by the secretary of state under this subsection does not reveal a violation of this chapter, the cost of the audit must be satisfied from the bond filed with the secretary of state.

3. An audit may not be made or requested of a statement for the sole reason that it was not timely filed with the secretary of state. An audit made or arranged according to this section must audit only those items required to be included in any statement, registration, or report filed with the secretary of state according to this chapter. The secretary of state may collect any payment obligation arising out of this section by civil action or by assignment to a collection agency, with any costs of collection to be added to the amount owed and to be paid by the delinquent filer. Any remaining moneys collected by the secretary of state after an audit is paid for under this section must be deposited in the state's general fund. This section does not apply to statements filed by candidates or candidate committees for candidates for county or city or school district offices.

Approved April 6, 2023

Filed April 10, 2023

## CHAPTER 178

### HOUSE BILL NO. 1270

(Representatives Frelich, K. Anderson, Dyk, Heilman, Murphy, Strinden)

AN ACT to amend and reenact section 15.1-09-30 of the North Dakota Century Code, relating to recording, publishing, and archiving of school district board meetings.

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

<sup>100</sup> **SECTION 1. AMENDMENT.** Section 15.1-09-30 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-09-30. School boards - Meetings.**

1. Each school board shall hold an initial meeting during the month of July following the annual election. The president of the school board shall select a meeting date that is convenient to the other board members and shall provide board members with written notice of the meeting.
2. Once during each month thereafter, a board shall hold a regular meeting for the transaction of business. The board of any school district having only one-room and two-room schools may meet as often as the board deems necessary, but not less than four times in each year.
3. Special meetings may be called by the president or by any two members of a board. Written notice of a special meeting must be given to each member of a board.
4. The attendance of a board member at any meeting, without objection, constitutes a waiver of the notice requirement for that member.
5. A board of a school district operating under an academic cooperative agreement approved by the superintendent of public instruction may participate in multiboard meetings in addition to, instead of, or in conjunction with the regular board meetings required by this section. Multiboard meetings must be for the purpose of pursuing joint academic or cooperative activities and must be held at the times and locations agreed to by the presidents of the participating boards. In addition to any other requirements set forth in section 44-04-20, the presidents of each school board shall ensure that notice of each multiboard meeting in which the school board will participate is published in the local newspapers of general circulation at least one week before the meeting date.
6. At the request of a resident of the school district, a school district shall record the school district's regular or special meeting, archive the recording, and make the recording available to the public. A request must be submitted to the school district no later than seven days prior to the meeting. A school district shall publish on its website a link to the recording of a board meeting. The

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<sup>100</sup> Section 15.1-09-30 was also amended by section 2 of House Bill No. 1120, chapter 111.

recording must be available on the school districts' website for no fewer than three months from seven days after the meeting. This section does not apply to executive sessions nor work sessions held as part of a regular or special meeting.

7. If a school district provides a livestream of a regular or special meeting of the board, the school district shall notify the public of the location of the link to access the livestream.

Approved April 10, 2023

Filed April 11, 2023

## CHAPTER 179

### HOUSE BILL NO. 1187

(Representatives Louser, Fegley, Hoverson, Longmuir, Mock, Novak, Thomas,  
VanWinkle)  
(Senator Elkin)

AN ACT to amend and reenact section 15.1-09-33.1 of the North Dakota Century Code, relating to the authority of a school district to pay signing bonuses.

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

**SECTION 1. AMENDMENT.** Section 15.1-09-33.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-09-33.1. School board authority - Payment of signing bonuses.**

1. The board of a school district may offer ~~and, upon the signing of the contract by both parties, pay~~ a signing bonus to an individual who:
  - a. Is licensed ~~to teach~~ by the education standards and practices board or approved ~~to teach~~ by the education standards and practices board;
  - b. Has signed a contract of employment ~~to serve as a classroom teacher in the district; and~~
  - c. ~~Was not~~Has never been employed ~~as a classroom teacher in the newly assigned role~~ by the board of a school district ~~in this state during the previous school year.~~
2. The board may pay to the individual the signing bonus authorized by subsection 1 in:
  - a. One lump sum upon the individual signing a contract of employment; or
  - b. Installments over a period of time not to exceed ~~three~~five years from the date the individual signed a contract of employment.
3. A signing bonus paid under this section:
  - a. Is in addition to any amount payable under a negotiated teachers' contract;;
  - b. May not be included in the district's negotiated salary schedule;~~and.~~
  - c. May not be included as salary for continuing contract purposes~~.~~
  - d. May not be paid until the individual is licensed and qualified for the newly assigned role by the education standards and practices board.

- e. May not be used for an individual employed the prior year by another school district in the state until the individual has been employed in the district for two years.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 180

### SENATE BILL NO. 2099

(Senator Schaible)

AN ACT to create and enact a new section to chapter 15.1-13 of the North Dakota Century Code, relating to information regarding minors in disciplinary records of the education standards and practices board.

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

**SECTION 1.** A new section to chapter 15.1-13 of the North Dakota Century Code is created and enacted as follows:

**Information identifying a minor - Exempt.**

Information that reasonably may identify a minor child, including name, date of birth, address, parent name, and an image of a minor, obtained by the board during the course of a disciplinary action is exempt from section 44-04-18.

Approved March 20, 2023

Filed March 21, 2023

## CHAPTER 181

### HOUSE BILL NO. 1259

(Representatives Novak, Hauck)

AN ACT to create and enact subsection 5 of section 15.1-15-12 of the North Dakota Century Code, relating to individuals under short-term contracts with a school district.

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

**SECTION 1.** Subsection 5 of section 15.1-15-12 of the North Dakota Century Code is created and enacted as follows:

5. Any individual employed by a school district in a position substantially funded by grant funds, overloads, or a temporary funding source, or an individual replacing a school district employee and who is employed by a school district in a position substantially funded by grant funds, overloads, or a temporary funding source, if the individual received advance notice of the defined contract term before accepting employment with the school district.

Approved March 22, 2023

Filed March 23, 2023

## CHAPTER 182

### SENATE BILL NO. 2070

(Senators Rust, Davison, Schaible)  
(Representatives Longmuir, Monson, Richter)

AN ACT to amend and reenact section 15.1-18-10 of the North Dakota Century Code, relating to criteria for teacher permits; and to provide an expiration date.

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

<sup>101</sup> **SECTION 1. AMENDMENT.** Section 15.1-18-10 of the North Dakota Century Code is amended and reenacted as follows:

#### **15.1-18-10. Specialty areas - Teacher qualification. (Effective through July 31, 20232031)**

Notwithstanding the requirements of this chapter:

1. An individual may teach art, business education, computer education, a foreign language, music, physical education, special education, and technology education at any grade level from kindergarten through grade eight, provided the individual:
  - a. Is licensed to teach by the education standards and practices board;
  - b. Is approved to teach in that area by the education standards and practices board; and
  - c. Meets all requirements set forth in rule by the superintendent of public instruction.
2. An individual may teach Native American languages provided the individual is an eminence-credentialed teacher.
3. An individual may teach in the areas of trade, industry, technical occupations, or health occupations, provided the individual has been issued a license to teach in such areas by the education standards and practices board.
4. An individual may teach in any subject, except elementary education, special education, mathematics, science, language arts, and social studies, if the individual:
  - a. Has a permit issued by the board and has a high school diploma;
  - b. (1) Possesses at least four thousand hours over five years of relevant work experience in the subject area to be taught; or

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<sup>101</sup> Section 15.1-18-10 was also amended by section 1 of House Bill No. 1304, chapter 183.

- (2) Possesses a certificate, permit, or degree in the subject area to be taught; and
- c. Enrolls in the North Dakota teacher support system approved mentor program, expensed to the sending district.
5. The board of a school district may authorize an individual to teach under subsection 4 for one year, up to a maximum of three years, if:
  - a. The administrator of a school within the district submits a written request to the education standards and practices board which indicates the administrator is unable to locate a qualified applicant and requests the education standards and practices board issue a permit;
  - b. The individual successfully completes a background check conducted by the education standards and practices board; and
  - c. The education standards and practices board issues a permit to the individual.
6. For an individual authorized to teach under subsection 5, the board of a school district may authorize the individual to teach for an additional four years, up to a maximum of seven years, if the individual also is enrolled in a teacher education program.
7. The board may adopt rules to administer teaching permits under this section.
- ~~7-8.~~ The board of a school district may terminate the employment of an individual with a teaching permit issued under this section at will.

**Specialty areas - Teacher qualification. (Effective after July 31, 20232031)**

Notwithstanding the requirements of this chapter:

1. An individual may teach art, business education, computer education, a foreign language, music, physical education, special education, and technology education at any grade level from kindergarten through grade eight, provided the individual:
  - a. Is licensed to teach by the education standards and practices board;
  - b. Is approved to teach in that area by the education standards and practices board; and
  - c. Meets all requirements set forth in rule by the superintendent of public instruction.
2. An individual may teach Native American languages provided the individual is an eminence-credentialed teacher.
3. An individual may teach in the areas of trade, industry, technical occupations, or health occupations, provided the individual has been issued a license to teach in such areas by the education standards and practices board.
4. An individual may teach in any subject, except elementary education, special education, mathematics, science, language arts, and social studies, if the individual:

- a. Has a permit issued by the board and has a high school diploma;
- b. (1) Possesses at least four thousand hours over five years of relevant work experience in the subject area to be taught; or  
(2) Possesses a certificate, permit, or degree in the subject area to be taught; and
- c. Enrolls in the North Dakota teacher support system approved mentor program, expensed to the sending district.

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 183

### HOUSE BILL NO. 1304

(Representative Schreiber-Beck)

AN ACT to amend and reenact section 15.1-18-10 of the North Dakota Century Code, relating to a special education teaching authorization; and to declare an emergency.

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

<sup>102</sup> **SECTION 1. AMENDMENT.** Section 15.1-18-10 of the North Dakota Century Code is amended and reenacted as follows:

#### **15.1-18-10. Specialty areas - Teacher qualification. (Effective through July 31, 2023)**

Notwithstanding the requirements of this chapter:

1. An individual may teach art, business education, computer education, a foreign language, music, physical education, special education, and technology education at any grade level from kindergarten through grade eight, provided the individual:
  - a. Is licensed to teach by the education standards and practices board;
  - b. Is approved to teach in that area by the education standards and practices board; and
  - c. Meets all requirements set forth in rule by the superintendent of public instruction.
2. An individual may teach Native American languages provided the individual is an eminence-credentialed teacher.
3. An individual may teach in the areas of trade, industry, technical occupations, or health occupations, provided the individual has been issued a license to teach in such areas by the education standards and practices board.
4. An individual may teach in any subject, except elementary education, special education, mathematics, science, language arts, and social studies, if the individual:
  - a. Has a permit issued by the board and has a high school diploma;
  - b. (1) Possesses at least four thousand hours over five years of relevant work experience in the subject area to be taught; or

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<sup>102</sup> Section 15.1-18-10 was also amended by section 1 of Senate Bill No. 2070, chapter 182.

- (2) Possesses a certificate, permit, or degree in the subject area to be taught; and
- c. Enrolls in the North Dakota teacher support system approved mentor program, expensed to the sending district.
5. An individual may teach special education using a teaching authorization under this subsection for a time not exceeding two years. An individual may obtain a special education teaching authorization if the individual:
- a. Is currently enrolled in a bachelor's program with a major in special education;
- b. Has successfully completed all professional education coursework, special education major-specific coursework, and student teaching; and
- c. Has passed the tests required by the education standards and practices board, including the content area test.
6. The board of a school district may authorize an individual to teach under subsection 4 for one year, up to a maximum of three years, if:
- a. The administrator of a school within the district submits a written request to the education standards and practices board which indicates the administrator is unable to locate a qualified applicant and requests the education standards and practices board issue a permit;
- b. The individual successfully completes a background check conducted by the education standards and practices board; and
- c. The education standards and practices board issues a permit to the individual.
- 6-7. The board may adopt rules to administer teaching permits under this section.
- 7-8. The board of a school district may terminate the employment of an individual with a teaching permit issued under this section at will.

**Specialty areas - Teacher qualification. (Effective after July 31, 2023)**

Notwithstanding the requirements of this chapter:

1. An individual may teach art, business education, computer education, a foreign language, music, physical education, special education, and technology education at any grade level from kindergarten through grade eight, provided the individual:
- a. Is licensed to teach by the education standards and practices board;
- b. Is approved to teach in that area by the education standards and practices board; and
- c. Meets all requirements set forth in rule by the superintendent of public instruction.
2. An individual may teach Native American languages provided the individual is an eminence-credentialed teacher.

3. An individual may teach in the areas of trade, industry, technical occupations, or health occupations, provided the individual has been issued a license to teach in such areas by the education standards and practices board.
4. An individual may teach in any subject, except elementary education, special education, mathematics, science, language arts, and social studies, if the individual:
  - a. Has a permit issued by the board and has a high school diploma;
  - b. (1) Possesses at least four thousand hours over five years of relevant work experience in the subject area to be taught; or  
(2) Possesses a certificate, permit, or degree in the subject area to be taught; and
  - c. Enrolls in the North Dakota teacher support system approved mentor program, expensed to the sending district.
5. An individual may teach special education using a teaching authorization under this subsection for a time not exceeding two years. An individual may obtain a special education teaching authorization if the individual:
  - a. Is currently enrolled in a bachelor's program with a major in special education;
  - b. Has successfully completed all professional education coursework, special education major-specific coursework, and student teaching; and
  - c. Has passed the tests required by the education standards and practices board, including the content area test.

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

Approved April 10, 2023

Filed April 11, 2023

## CHAPTER 184

### HOUSE BILL NO. 1144

(Representatives Schauer, Hanson, O'Brien, Pyle, Satrom, Schreiber-Beck, Steiner, Strinden)  
(Senators Hogan, K. Roers, Weber)

AN ACT to create and enact a new section to chapter 15.1-19, section 50-11.1-02.4, and a new subsection to section 50-11.1-03 of the North Dakota Century Code, relating to required training for mandated reporters of child abuse and neglect.

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

**SECTION 1.** A new section to chapter 15.1-19 of the North Dakota Century Code is created and enacted as follows:

##### **Mandated reporter of suspected child abuse or neglect - Training.**

1. Each public and nonpublic school teacher, administrator, and counselor annually shall provide documentation to the department of public instruction of the individual's completion of the online interactive training module provided by the department of health and human services for mandated reporters of suspected child abuse or neglect.
2. This training must qualify for continuing education credits that count toward license renewal.

**SECTION 2.** Section 50-11.1-02.4 of the North Dakota Century Code is created and enacted as follows:

##### **50-11.1-02.4. Early childhood services providers - Mandated reporter of suspected child abuse or neglect - Training.**

1. An early childhood services provider annually shall provide documentation to the department of the provider's and the provider's staff members' completion of the online interactive training module provided by the department for mandated reporters of suspected child abuse or neglect.
2. This training must qualify for continuing education credits that count toward license renewal.

<sup>103</sup> **SECTION 3.** A new subsection to section 50-11.1-03 of the North Dakota Century Code is created and enacted as follows:

Any hours of department-approved training related to child care which an applicant completes after submitting the fees and application as required under subsection 8 must be counted toward the licensing annual requirements for the following year.

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<sup>103</sup> Section 50-11.1-03 was also amended by section 4 of Senate Bill No. 2104, chapter 435.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 185

### HOUSE BILL NO. 1156

(Representatives Schreiber-Beck, D. Johnson, Jonas, Longmuir, Pyle, Sanford)  
(Senators Cleary, Hogan, Kreun, Rust)

AN ACT to amend and reenact subsection 3 of section 15-19-01 and section 15.1-22-01 of the North Dakota Century Code, relating to services provided by the center for distance education.

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

<sup>104</sup> **SECTION 1. AMENDMENT.** Subsection 3 of section 15-19-01 of the North Dakota Century Code is amended and reenacted as follows:

3. The center for distance education may provide services to persons who are not North Dakota residents, including entering an agreement with a regionally accredited postsecondary institution to provide high school and postsecondary credit for the completion of an academic course.

**SECTION 2. AMENDMENT.** Section 15.1-22-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **15.1-22-01. Kindergarten - Establishment by board –~~Request by parent.~~**

The board of a school district shall ~~either provide:~~

1. Provide at least a half-day kindergarten program for any student enrolled in the district ~~or pay; or~~
2. Pay the tuition required for the student to attend a kindergarten program in another school district or, if requested by a parent or guardian, through the center for distance education.

Approved April 11, 2023

Filed April 12, 2023

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<sup>104</sup> Section 15-19-01 was also amended by section 1 of House Bill No. 1376, chapter 186, and section 2 of Senate Bill No. 2269, chapter 161.

## CHAPTER 186

### HOUSE BILL NO. 1376

(Representatives Strinden, Meier, Monson, Pyle, Richter, Satrom, Schreiber-Beck)  
(Senators Davison, Meyer)

AN ACT to amend and reenact sections 15-19-01, 15.1-07-25.4, 15.1-31-01, 15.1-31-06, 15.1-31-07, and 15.1-31-08 of the North Dakota Century Code, relating to virtual instruction of students and open enrollment.

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

<sup>105</sup> **SECTION 1. AMENDMENT.** Section 15-19-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **15-19-01. North Dakota center for distance education courses - Establishment - Enrollment of students - Courses of instruction.**

The state shall provide kindergarten through grade twelve courses, comprehensive educational support, and high school diplomas through the center for distance education under the following provisions:

1. A complete curriculum prescribed by state-mandated education accreditation entities which meets the requirements for digital education the superintendent of public instruction has determined to be appropriate.
2. ~~A superintendent or an administrator of a school may deny the enrollment of a student in that district at the center for distance education except as provided in subsection 5.~~
3. The center for distance education may provide services to persons who are not North Dakota residents.
4. ~~3. Center~~ A center for distance education ~~students~~ student's school district of residence shall pay fees as may be prescribed by the state board for career and technical education.
5. ~~4. Students exempt from the compulsory school attendance laws pursuant to subdivision e of subsection 1 of section 15.1-20-02 may enroll in distance education courses offered through the center for distance education. These students may study their center for distance education lessons in their learning environment under the supervision of a parent.~~

**SECTION 2. AMENDMENT.** Section 15.1-07-25.4 of the North Dakota Century Code is amended and reenacted as follows:

#### **15.1-07-25.4. Virtual learning - School district policy - Report to legislative management and legislative assembly.**

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<sup>105</sup> Section 15-19-01 was also amended by section 1 of House Bill No. 1156, chapter 185, and section 2 of Senate Bill No. 2269, chapter 161.

1. The board of a school district or governing board of a nonpublic school that operates a physical school plant may adopt a policy to allow students to engage in virtual instruction and in the case of a school district, qualify for average daily membership in the district. A resident school district may not deny open enrollment to an approved virtual school.
2. A student or a student's family member may not receive any item, service, or thing of value not given in exchange for fair market consideration from a vendor providing instruction or support under this section.
3. The superintendent of public instruction shall adopt rules governing policies under this section. A policy adopted by a school district under this section must comply with the rules adopted by the superintendent of public instruction.
4. The superintendent of public instruction shall provide biennial reports an annual report to either the legislative management regarding or the legislative assembly. In odd-numbered years, the report must be made to the legislative assembly. In even-numbered years, the report must be made to the legislative management. The annual report must:
  - a. Contain a comparison of the academic performance metrics of students participating in virtual instruction against students not participating in virtual instruction under this section; and
  - b. Use the statewide prekindergarten through grade twelve strategic vision framework goals.
5. If the superintendent of public instruction does not have access to academic performance reports of a school district's virtual instruction subgroup because of the low group size, the district shall provide the annual report required under this section for the district's comparison data.
6. Students enrolled in an approved virtual school do not generate school district sized weighting factors pursuant to section 15.1-27-03.2.

**SECTION 3. AMENDMENT.** Section 15.1-31-01 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-31-01. Open enrollment - Procedure.**

1. By March first of the school year preceding the year of enrollment, a parent who wishes to enroll a student in a North Dakota school district other than the student's district of residence shall file an application for approval with the board of the admitting district and shall file a copy of the application with the student's district of residence. The superintendent of public instruction shall make the application forms available in each school district.
2. By April first of the school year preceding the year of enrollment, the board of the admitting district shall approve or deny the application. The board of the admitting district shall notify the board of the district of residence and the student's parent of its decision within five days.
3. Notice of intent to enroll in the admitting district obligates the student to attend the admitting district during the following school year unless the school boards of the resident and the admitting districts agree in writing to allow the student

to transfer back to the resident district or the student's parent relocates to another district.

4. A parent who wishes to enroll a student in a school district other than the student's district of residence shall file an application for approval with the board of the admitting district. All applications must be reviewed in the order they are received.
5. A student whose school district of residence does not offer the grade level in which the student requires enrollment may not participate in open enrollment. For purposes of determining whether the grade level in which the student requires enrollment is offered, the several school districts cooperating with each other for the joint provision of education services under a plan approved by the superintendent of public instruction must be considered to be a single district.
6. A child placed for purposes other than education in a group or residential care facility or in a psychiatric residential treatment facility is not eligible for open enrollment under this section.
7. The board of a school district of residence and the board of an admitting district shall waive the application, consideration, and approval dates in this section for any student who, together with the student's parent, moves from the student's school district of residence to another school district and who wishes to enroll in a school district other than the district to which the student moved.
8. The board of a school district of residence and the board of an admitting district shall waive the application, consideration, and approval dates in this section for any student who, together with the student's parent, moves into this state from out of state and who wishes to enroll in a school district other than the district to which the student moved.

**SECTION 4. AMENDMENT.** Section 15.1-31-06 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-31-06. Open enrollment - School boards - Standards.**

1. The board of each school district shall set standards for the acceptance and denial of applications for admittance under open enrollment as provided in section ~~15.1-31-04~~15.1-31-08. The standards may address the capacity of a program, ~~class,~~ grade level, or school building. The standards may not address previous academic achievement, participation in extracurricular activities, disabilities, English language proficiency, or previous disciplinary proceedings.
2. A board may ~~also~~ determine that applications for admittance under open enrollment, in accordance with this chapter, will not be considered only if there is a lack of capacity in a program, grade level, or school.
3. a. A school district participating in an open enrollment program may not give or offer to give a student remuneration, or directly exert influence on the student or the student's family, in order to encourage participation in the open enrollment program. The actions prohibited under this subdivision do not include providing informational materials about the program.

- b. ~~For purposes of this subsection, directly exerting influence means providing information about the school district to individuals who are not residents of that district unless the information is requested.~~
- e. If the members of the board of a school district believe that another school district has violated this subsection, the board may file a complaint with the superintendent of public instruction. Upon receipt of a complaint alleging a violation of this subsection, the superintendent of public instruction shall hold a hearing and accept testimony and evidence regarding the complaint. If the superintendent finds that a school district has violated this subsection, the superintendent may withhold some or all of the state aid payments to which the district would be otherwise entitled for a period of one year from the date of the finding. A decision by the superintendent under this subsection is appealable to the state board of public school education. A decision by the state board of public school education is final.

**SECTION 5. AMENDMENT.** Section 15.1-31-07 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-31-07. Students not subject to this chapter.**

4. If a student, as a result of a school district dissolution or reorganization, resides in a district other than the one the student chooses to attend at the time of the dissolution or reorganization, the student is not subject to this chapter and may attend school in the chosen school district.

2. ~~If a student resides in a district other than the one the student is enrolled in for purposes of receiving virtual instruction, the student is not subject to this chapter unless a cost-sharing agreement is established between the school district of residence and the receiving district.~~

**SECTION 6. AMENDMENT.** Section 15.1-31-08 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-31-08. Open enrollment - Transfer of students - Responsibility of district of residence.**

1. ~~Notwithstanding the provisions of chapter 15.1-31, a~~ student's parent may apply to a ~~contiguous~~ another school district for admission of the student at any time during the school year if:
- The student was a victim of violence occurring within the school in which the student was enrolled and the violence was documented;
  - The superintendent of public instruction has declared the school in which the student was enrolled to be an unsafe school; or
  - The superintendent of public instruction has identified the school in which the student was enrolled as one that requires program improvement for six consecutive years.
2. The school district receiving an application under subsection 1 shall review the application to ensure compliance with the provisions of subsection 1 and shall notify the student's parent and the student's school district of residence of the arrangements for the student's transfer within five days from the date the application was received.

3. The student's school district of residence shall consider the student transferred as of the date of enrollment by the admitting district.
4. Upon transfer of a student under this section, the board of the admitting district and the board of the student's school district of residence shall enter into a tuition agreement. The student's school district of residence shall reimburse the admitting district for all costs incurred by the admitting district in providing education for the student.
5. The student's school district of residence shall transport the student to school in the admitting district or shall reimburse the admitting district for all costs incurred in transporting the student or providing for the transportation of the student to school in the admitting district. These transportation costs are not reimbursable through state transportation funds.
6. ~~The provisions of this~~This section applies to a student until the student's parent or legal guardian decides to enroll the student in another school, or in the case of a student who has been transferred for the student's safety or due to a school's improvement status under subsection 1, until the conclusion of the school year in which the superintendent of public instruction declares that the school in the student's district of residence is no longer an unsafe school or that the school no longer requires program improvement.

Approved May 8, 2023

Filed May 9, 2023

## CHAPTER 187

### HOUSE BILL NO. 1265

(Representatives K. Anderson, Dyk, Heilman, Prichard, Rohr, Steiner)  
(Senator Myrdal)

AN ACT to create and enact a new section to chapter 15.1-21 of the North Dakota Century Code, relating to growth and development and human sexuality curriculum.

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

**SECTION 1.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

#### **Growth and development and human sexuality curriculum - Content.**

1. As used in this section:
  - a. "Human growth and development discussion" means an oral, written, or digital lesson, lecture, or presentation about human biology related to pregnancy and human development inside the womb.
  - b. "Human sexuality instruction" means an oral, written, or digital lesson, lecture, or presentation about sexual activity and pregnancy in the context of student health or healthy relationships.
2. A school district's health curriculum must include human growth and development discussion. The human growth and development discussion must include:
  - a. A high-definition ultrasound video, at least three minutes in duration, showing the development of the brain, heart, sex organs, and other vital organs in early fetal development; and
  - b. A high-quality, computer-generated rendering or animation showing the process of fertilization and every stage of human development inside the uterus, noting significant markers in cell growth and organ development for every week of pregnancy until birth.
3. A school district offering human sexuality instruction shall ensure human sexuality instruction includes:
  - a. A high-definition ultrasound video, at least three minutes in duration, showing the development of the brain, heart, sex organs, and other vital organs in early fetal development; and
  - b. A high-quality, computer-generated rendering or animation showing the process of fertilization and every stage of human development inside the uterus, noting significant markers in cell growth and organ development for every week of pregnancy until birth.

4. The superintendent of public instruction shall ensure the requirements of this section are included in the North Dakota health content standards.

Approved April 6, 2023

Filed April 10, 2023

## CHAPTER 188

### HOUSE BILL NO. 1398

(Representatives Lefor, Bosch, Novak, O'Brien, Schreiber-Beck)  
(Senators Rummel, Rust, Vedaa)

AN ACT to create and enact a new section to chapter 15.1-26 of the North Dakota Century Code, relating to computer science and cybersecurity instruction for adult learners; to amend and reenact sections 15.1-21-01, 15.1-21-02, and 15.1-21-02.2 of the North Dakota Century Code, relating to mandatory computer science and cybersecurity instruction and minimum requirements for high school graduation; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 15.1-21-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-21-01. Elementary and middle schools - Required instruction.**

~~In order to~~To be approved by the superintendent of public instruction, each public and nonpublic elementary and middle school shall ~~provide~~:

1. Provide to students instruction in:

- ~~1-a.~~ English language arts, including reading, composition, creative writing, English grammar, and spelling.
- ~~2-b.~~ Mathematics.
- ~~3-c.~~ Social studies, including:
  - ~~a-(1)~~ The United States Constitution;
  - ~~b-(2)~~ United States history;
  - ~~c-(3)~~ Geography;
  - ~~d-(4)~~ Government; and
  - ~~e-(5)~~ North Dakota studies, with an emphasis on geography, history, the federally recognized Indian tribes in the state, and agriculture of this state, in the fourth and eighth grades.
- ~~4-d.~~ Science, including agriculture.
- ~~5-e.~~ Physical education.
- ~~6-f.~~ Health, including physiology, hygiene, disease control, and the nature and effects of alcohol, tobacco, and narcotics.
- g. Computer science, including cybersecurity.

2. Develop a computer science and cybersecurity integration plan to ensure introduction to foundational computer science and cybersecurity knowledge. The board of a public school or school district shall approve a plan by July 1, 2024.

**SECTION 2. 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~~To be approved by the superintendent of public instruction, each public and nonpublic high school shall provide instruction in or 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:
    - (1) One unit of world history;
    - (2) One unit of United States history, including Native American tribal 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;
  - 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; and
    - k. One unit of computer science or cybersecurity.
2. In addition to the requirements of subsection 1, each public and nonpublic high school shall make:
  - a. 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; and
  - b. Develop a computer science and cybersecurity integration plan to ensure introduction to computer science and cybersecurity knowledge. The board of a public school or school district shall approve a plan by July 1, 2024.
3. Each unit which must be made available under this section must meet or exceed the state content standards, unless a school district or governing board of a nonpublic high school has adopted a mastery framework policy and awards units based on the successful completion of the relevant portions of the North Dakota learning continuum. A mastery framework policy adopted by a school district or governing board of a nonpublic high school must identify the portions of the North Dakota learning continuum which must be mastered for a student to attain units necessary for high school graduation under section 15.1-21-02.2.
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 3. 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 graduation - Minimum requirements. (Effective through July 31, 2025)**

1. Except as provided in section 15.1-21-02.3 and subsection 2, the following twenty-two units of high school coursework constitute the minimum requirement for high school graduation:
  - a. Four units of English language arts from a sequence that includes literature, composition, and speech;
  - b. Three units of mathematics, which may include one unit of computer science approved by the superintendent of public instruction;
  - c. Three units of science, consisting of:
    - (1) (a) One unit of biology;
    - (b) One unit of chemistry; and
    - (c) One unit of physics; or
    - (2) (a) One unit of biology;
    - (b) One unit of physical science; and
    - (c) One unit or two one-half units of any other science which may include one unit of computer science or cybersecurity approved by the superintendent of public instruction;
  - d. Three units of social studies, including:
    - (1) One unit of United States history;
    - (2) (a) One-half unit of United States government and one-half unit of economics; or
    - (b) One unit of problems of democracy; 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;
  - e. (1) One unit of physical education; or

- (2) One-half unit of physical education and one-half unit of health;
- f. Three units of:
  - (1) Foreign languages;
  - (2) Native American languages;
  - (3) Fine arts; or
  - (4) Career and technical education courses; and
- g. Any five additional units.
- 2. If approved by the board of a school district or nonpublic school, a school district or nonpublic school may develop eligibility criteria or programmatic requirements to allow a passing score on the relevant portions of the GED assessment to receive credit for the corresponding requirements of subdivisions a through d of subsection 1.

**High school graduation - Minimum requirements. (Effective after July 31, 2025)**

- 1. Except as provided in section 15.1-21-02.3 and subsection 2, the following twenty-two units of high school coursework constitute the minimum requirement for high school graduation:
  - a. Four units of English language arts from a sequence that includes literature, composition, and speech;
  - b. Three units of mathematics, which may include one unit of computer science approved by the superintendent of public instruction;
  - c. Three units of science, consisting of:
    - (1) (a) One unit of biology;
    - (b) One unit of chemistry; and
    - (c) One unit of physics; or
    - (2) (a) One unit of biology;
    - (b) One unit of physical science; and
    - (c) One unit or two one-half units of any other science which may include one unit of computer science or cybersecurity approved by the superintendent of public instruction;
  - d. Three units of social studies, including:
    - (1) One unit of United States history, including Native American tribal history;
    - (2) (a) One-half unit of United States government and one-half unit of economics; or

- (b) One unit of problems of democracy; 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;
  - e. (1) One unit of physical education; or
  - (2) One-half unit of physical education and one-half unit of health;
  - f. Three units of:
    - (1) Foreign languages;
    - (2) Native American languages;
    - (3) Fine arts; or
    - (4) Career and technical education courses; and
  - g. Any five additional units; and
  - h. One unit of computer science or cybersecurity whether under subdivision b, c, or both.
  - i. The requirements of subdivision h of subsection 1 are waived if the student has completed a computer science and cybersecurity integration plan approved by the school board.
2. If approved by the board of a school district or nonpublic school, a school district or nonpublic school may develop eligibility criteria or programmatic requirements to allow a passing score on the relevant portions of the GED assessment to receive credit for the corresponding requirements of subdivisions a through d of subsection 1.

**SECTION 4.** A new section to chapter 15.1-26 of the North Dakota Century Code is created and enacted as follows:

**Authority - Adult learning - Computer operations and cybersecurity instruction.**

The superintendent of public instruction shall provide grants not to exceed three hundred thousand dollars total to school districts, nonpublic schools, area career and technology centers, job service North Dakota workforce centers, public libraries, adult education centers and learning centers that qualify as nonprofit entities under section 501(c)(3) of the federal Internal Revenue Code [26 U.S.C. 501(c)(3)] to offer computer operations and cybersecurity courses for adults, for the biennium beginning July 1, 2023, and ending June 30, 2025.

School districts, nonpublic schools, public libraries, area career and technology centers, job service North Dakota workforce centers, adult education centers and learning centers that qualify as nonprofit entities under section 501(c)(3) of the federal Internal Revenue Code [26 U.S.C. 501(c)(3)] shall use all or part of the grant money to pay a stipend to a teacher of the course.

The superintendent of public instruction shall create guidance to implement the grant program.

**SECTION 5. EXPIRATION DATE.** Section 4 of this Act is effective through June 30, 2025, and after that date is ineffective.

Approved March 24, 2023

Filed March 24, 2023

## CHAPTER 189

### HOUSE BILL NO. 1131

(Representatives Pyle, Jonas, Schreiber-Beck, Swiontek)  
(Senators Davison, Rust)

AN ACT to amend and reenact subsection 1 of section 15.1-21-02.3 of the North Dakota Century Code, relating to optional high school curriculum.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 15.1-21-02.3 of the North Dakota Century Code is amended and reenacted as follows:

1. If after completing at least two years of high school, a student has failed to pass at least one-half unit from three subdivisions in subsection 1 of section 15.1-21-02.2, has failed to demonstrate proficiency in a standards-based grading system, 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 the student's career advisor, guidance counselor, or principal meet with the student and the student's parent to determine whether the student should be permitted to pursue an optional high school curriculum, in place of the requirements ~~set forth~~ in section 15.1-21-02.2. 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:
  - a. Four units of English language arts from a sequence that includes literature, composition, and speech;
  - b. Two units of mathematics;
  - c. Two units of science;
  - d. Three units of social studies, which may include up to one-half unit of North Dakota studies and one-half unit of multicultural studies;
  - e. (1) One unit of physical education; or  
(2) One-half unit of physical education and one-half unit of health;
  - f. Two units of:
    - (1) Foreign languages;
    - (2) Native American languages;
    - (3) Fine arts; or
    - (4) Career and technical education courses; and
  - g. Any seven additional units.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 190

### HOUSE BILL NO. 1382

(Representatives Boschee, Davis, Heinert, Jonas, Nathe, Richter, Schreiber-Beck)  
(Senators Braunberger, Wobbema)

AN ACT to amend and reenact section 15.1-21-02.6 of the North Dakota Century Code, relating to scholarships for registered apprenticeship program participants.

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

<sup>106</sup> **SECTION 1. AMENDMENT.** Section 15.1-21-02.6 of the North Dakota Century Code is amended and reenacted as follows:

#### **15.1-21-02.6. North Dakota scholarship - Amount - Applicability. (Effective through July 31, 20242030)**

1. a. The state board of higher education shall provide to any student certified as being eligible by the superintendent of public instruction a North Dakota scholarship, 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 with a physical presence in this state, maintains a cumulative grade point average of 2.75, and maintains progress toward program completion.
- b. The state board of higher education shall provide to any student certified as being eligible by the superintendent of public instruction a North Dakota scholarship, a North Dakota academic scholarship, or a North Dakota career and technical education scholarship in the amount of five hundred dollars for each quarter or clock-hour term during which the student is enrolled full time at an accredited institution of higher education with a physical presence in this state or an accredited private career school with a physical presence in this state, maintains a cumulative grade point average of 2.75, and maintains progress toward program completion.
- c. The state board of higher education shall provide to any student certified as being eligible by the superintendent of public instruction a North Dakota scholarship, a North Dakota academic scholarship, or a North Dakota career and technical education scholarship in the amount of five hundred dollars each term if the student is enrolled in a qualifying registered apprenticeship program within this state. The state board of higher education and the state board for career and technical education shall establish:
  - (1) Procedures to administer the scholarship;
  - (2) Requirements for eligibility, including full-time enrollment, program progress, and a minimum grade point average or its equivalency; and

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<sup>106</sup> Section 15.1-21-02.6 was also amended by section 11 of House Bill No. 1030, chapter 156.

(3) A payment schedule.

2. The state board shall monitor each scholarship recipient to ensure that the student meets the academic and other requirements of this section. Upon determining a recipient student has failed to meet the requirements of this section, the board shall provide notification to the student within ten business days.
3. A student is not entitled to receive more than six thousand dollars under this section.
4. The state board of higher education shall forward the scholarship directly to the institution in which the student is enrolled.
5.
  - a. This section does not require a student to be enrolled in consecutive semesters, quarters, or clock-hour terms.
  - b. A scholarship under this section is valid only for six academic years after the student's graduation from high school and may be applied to a graduate or professional program.
6. A scholarship under this section is available to any eligible resident student who fulfills the requirements of section 15.1-21-02.4, section 15.1-21-02.5, or section 15.1-21-02.10 and who:
  - a. Graduates from a high school in this state;
  - b. Graduates from a high school in a bordering state under chapter 15.1-29;
  - c. Graduates from a nonpublic high school in a bordering state while residing with a custodial parent in this state; or
  - d. Completes a program of home education supervised in accordance with chapter 15.1-23.
7.
  - a. For purposes of North Dakota scholarship eligibility under this section, "full-time" has the same meaning as the term is defined by the institution the student is attending.
  - b. A student who is enrolled less than full-time may retain scholarship eligibility if the student is in the final semester, quarter, or clock-hour term before program completion. The waiver of the full-time enrollment status requirement for scholarship eligibility may not apply to a student more than once.
  - c. For the purpose of North Dakota scholarship eligibility under this section, "progress toward program completion" means earning the following minimum number of credits after each semester, quarter, or clock-hour term disbursement to qualify for the subsequent disbursement:
    - (1) Twenty-four credits after disbursement two;
    - (2) Thirty-nine credits after disbursement three;
    - (3) Fifty-four credits after disbursement four;

- (4) Sixty-nine credits after disbursement five;
  - (5) Eighty-four credits after disbursement six; and
  - (6) Ninety-nine credits after disbursement seven.
8. For purposes of scholarship eligibility under this section, "clock-hour term" has the same meaning as the term is defined by the state board of higher education. The state board of higher education shall determine the conversion of:
- a. Clock hours to credit hours; and
  - b. Percentage-based grading to grade point average.

**15.1-21-02.6. North Dakota scholarship - Amount - Applicability. (Effective after July 31, 2024~~2030~~)**

- 1. a. The state board of higher education shall provide to any student certified as being eligible by the superintendent of public instruction a North Dakota 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 with a physical presence in this state, maintains a cumulative grade point average of 2.75, and maintains progress toward program completion.
  - b. The state board of higher education shall provide to any student certified as being eligible by the superintendent of public instruction a North Dakota scholarship in the amount of five hundred dollars for each quarter or clock-hour term during which the student is enrolled full time at an accredited institution of higher education with a physical presence in this state or an accredited private career school with a physical presence in this state, maintains a cumulative grade point average of 2.75, and maintains progress toward program completion.
  - c. The state board of higher education shall provide to any student certified as being eligible by the superintendent of public instruction a North Dakota scholarship, a North Dakota academic scholarship, or a North Dakota career and technical education scholarship in the amount of five hundred dollars each term if the student is enrolled in a qualifying registered apprenticeship program within this state. The state board of higher education and the state board for career and technical education shall establish:
    - (1) Procedures to administer the scholarship;
    - (2) Requirements for eligibility, including full-time enrollment, program progress, and a minimum grade point average or its equivalency; and
    - (3) A payment schedule.
2. The state board shall monitor each scholarship recipient to ensure the student meets the academic and other requirements of this section. Upon determining a recipient student has failed to meet the requirements of this section, the board shall provide notification to the student within ten business days.

3. A student is not entitled to receive more than six thousand dollars under this section.
4. The state board of higher education shall forward the scholarship directly to the institution in which the student is enrolled.
5.
  - a. This section does not require a student to be enrolled in consecutive semesters, quarters, or clock-hour terms.
  - b. A scholarship under this section is valid only for six academic years after the student's graduation from high school and may be applied to a graduate or professional program.
6. A scholarship under this section is available to any eligible resident student who fulfills the requirements of section 15.1-21-02.10 and who:
  - a. Graduates from a high school in this state;
  - b. Graduates from a high school in a bordering state under chapter 15.1-29;
  - c. Graduates from a nonpublic high school in a bordering state while residing with a custodial parent in this state; or
  - d. Completes a program of home education supervised in accordance with chapter 15.1-23.
7.
  - a. For purposes of North Dakota scholarship eligibility under this section, "full-time" has the same meaning as the term is defined by the institution the student is attending.
  - b. A student who is enrolled less than full-time may retain scholarship eligibility if the student is in the final semester, quarter, or clock-hour term before program completion. The waiver of the full-time enrollment status requirement for scholarship eligibility may not apply to a student more than once.
  - c. For the purpose of North Dakota scholarship eligibility under this section, "progress toward program completion" means earning the following minimum number of credits after each semester, quarter, or clock-hour term disbursement to qualify for the subsequent disbursement:
    - (1) Twenty-four credits after disbursement two;
    - (2) Thirty-nine credits after disbursement three;
    - (3) Fifty-four credits after disbursement four;
    - (4) Sixty-nine credits after disbursement five;
    - (5) Eighty-four credits after disbursement six; and
    - (6) Ninety-nine credits after disbursement seven.
8. For purposes of scholarship eligibility under this section, "clock-hour term" has the same meaning as the term is defined by the state board of higher

education. The state board of higher education shall determine the conversion of:

- a. Clock hours to credit hours; and
- b. Percentage-based grading to grade point average.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 191

### HOUSE BILL NO. 1305

(Representatives Schreiber-Beck, D. Johnson, Jonas, Longmuir)

AN ACT to amend and reenact section 15.1-21-02.10 of the North Dakota Century Code, relating to incorporating additional and different requirements for the North Dakota scholarship.

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

**SECTION 1. AMENDMENT.** Section 15.1-21-02.10 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-21-02.10. North Dakota scholarship.**

Any resident student who meets the requirements of section 15.1-21-02.6 is eligible to receive a North Dakota scholarship if the student:

1. Completed an individual consultative process or a nine-week course under subsection 2 of section 15.1-21-18;
2. Completed the civics test under section 15.1-21-27;
3. Completed a four-year rolling plan, as determined by the superintendent of public instruction;
4. Obtained a cumulative grade point average of at least 3.0 on a 4.0 grading scale, or an equivalent course proficiency score if the student was enrolled in a school district participating in an approved innovative education program under section 15.1-06-08.2 and the school district obtained a waiver under section 15.1-06-08.1;
5. Completed the requirements in at least four of the following while enrolled in grades nine through twelve:
  - a. Twenty-five hours of community service;
  - b. A ninety-five percent attendance rate as determined under section 15.1-20-02.1, not including any school-related absences;
  - c. A career exploration experience, as determined by the superintendent of public instruction;
  - d. At least two years in organized cocurricular activities;
  - e. At least two years in organized extracurricular activities;
  - f. A capstone project, as determined by the superintendent of public instruction;
  - g. An online learning course; and

- h. Successful demonstration of competency in twenty-first century skills, as determined by the superintendent of public instruction; and
6. Completed the requirements in two of the following subdivisions while enrolled in grades nine through twelve:
- a. (1) Received:
- (a) A composite score of at least twenty-four on an ACT; or
  - (b) A score of at least 1180 on an SAT; and
- (2) Completed the requirements in at least two of the following:
- (a) A grade of at least "C" in an advanced placement course, or an equivalent course proficiency score;
  - (b) A grade of at least "C" in a dual-credit English or mathematics course, or an equivalent course proficiency score;
  - (c) A grade of at least "C" in one unit of algebra II, or an equivalent course proficiency score;
  - (d) A grade of at least "C" in three fine arts courses;
  - (e) A score of at least three on an advanced placement examination;
  - (e)(f) A score of at least four on an international baccalaureate examination; and
  - (f)(g) A cumulative grade point average of at least 3.0 on a 4.0 grading scale, or an equivalent course proficiency score if the student was enrolled in a school district participating in an approved innovative education program under section 15.1-06-08.2 and the school district obtained a waiver under section 15.1-06-08.1, in core courses required for admission to institutions of higher education under the control of the state board of higher education;
- b. (1) ~~Earned four:~~
- (a) Four units of career and technical education, including two units from a coordinated plan of study recommended by the department of career and technical education and approved by the superintendent of public instruction; or
  - (b) Three units of the same world language, indigenous language, or sign language;
- (2) Received:
- (a) A composite score of at least twenty-four on an ACT; ~~or~~
  - (b) A score of at least 1180 on an SAT; or

- (c) 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; and
- (3) Successfully completed the requirements in at least two of the following:
- (a) A career-ready practices course developed and recommended by the department of career and technical education and approved by the superintendent of public instruction;
  - (b) A grade of at least "C" in a dual-credit course, or an equivalent course proficiency score;
  - (c) A technical assessment or industry credential, as determined by the department of career and technical education;
  - (d) Forty hours in a workplace learning experience, approved by the superintendent of public instruction;
  - (e) Forty hours in a work-based learning experience aligned to the Strengthening Career and Technical Education for the 21st Century Act [Pub. L. 115-224; 132 Stat. 1563; 20 U.S.C. 2301 et seq.]; and
  - (f) Received:
    - [1] A score of at least three on a reading and mathematics assessment administered under subsection 1 of section 15.1-21-08 while enrolled in grades nine through twelve; or
    - [2] ACT scores of at least nineteen in English and at least twenty-two in mathematics if the school in which the student was enrolled used an ACT assessment for accountability; or
- c. (1) Received:
- (a) ~~A score of at least thirty-one on an ASVAB test and successfully completed basic training in one of the branches of the United States military; or~~
  - (~~b~~) A score of at least ~~eighty-five~~fifty on an ASVAB test; or
  - (~~b~~) A score of at least thirty-one on an ASVAB test and successfully completed basic training in one of the branches of the United States military before high school graduation or within ninety days of graduating from high school. Upon successful completion from basic training, the student must provide a certificate of completion from basic training to the department of public instruction;
- (2) Obtained a grade of at least "C" in a physical education course, or an equivalent course proficiency score; and
- (3) Completed any:

- (a) Any two of subparagraphs a through f of paragraph 2 of subdivision a, or any two of subparagraphs a through f of paragraph 3 of subdivision b;
- (b) Two units of junior reserve officers' training corps; or
- (c) Phase one of the cadet civil air patrol program.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 192

### SENATE BILL NO. 2028

(Legislative Management)  
(Education Policy Committee)

AN ACT to create and enact section 15.1-21-17.1 of the North Dakota Century Code, relating to interim assessment of students.

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

**SECTION 1.** Section 15.1-21-17.1 of the North Dakota Century Code is created and enacted as follows:

##### **15.1-21-17.1. Interim assessment - State-provided or state-approved list.**

1. Each public school district shall administer annually to students in grades kindergarten through ten at least two assessments in mathematics and reading. In administering the assessment, a public school district shall use:
  - a. The state-provided interim assessment; or
  - b. An interim assessment from a state-approved list created and maintained by the superintendent of public instruction.
2. The superintendent of public instruction shall contract with an interim assessment vendor to create a state-provided interim assessment and distribute the assessment to each public school district, at no charge to the districts, for the grade levels and subjects provided in subsection 1.
3. If a district chooses to use an assessment from the state-approved list, the district is responsible for any assessment-related costs.
4. To qualify as a state-provided or state-approved vendor of interim assessments, a vendor must share the assessment data electronically with the statewide longitudinal data system for the purposes of statewide aggregated data results. Individual district level data may be shared at the discretion of the local district.
5. The superintendent shall adopt rules to develop the selection and approval criteria for a state-approved interim assessment vendor.

Approved March 20, 2023

Filed March 21, 2023

## CHAPTER 193

### SENATE BILL NO. 2167

(Senators Kannianen, Elkin, Paulson)  
(Representatives Fegley, Finley-DeVille, J. Olson)

AN ACT to amend and reenact sections 15.1-23-02 and 15.1-23-15 of the North Dakota Century Code, relating to home education.

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

**SECTION 1. AMENDMENT.** Section 15.1-23-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **15.1-23-02. Statement of intent to supervise home education.**

At least ~~fourteen~~five days before beginning home education or within fourteen days of establishing a child's residence in a school district, and once each year thereafter, a parent intending to supervise or supervising home education shall file a statement, reflecting that intent or fact, with the superintendent of the child's school district of residence or if no superintendent is employed, with the county superintendent of schools for the child's county of residence.

1. The statement must include:
  - a. The name ~~and~~, address, date of birth, and grade level of the child receiving home education;
  - b. ~~The child's date of birth;~~
  - c. ~~The child's grade level;~~
  - d. The name ~~and~~, address, and qualifications of the parent who will supervise the home education;
  - e. ~~The qualifications of the parent who will supervise the home education;~~
  - f.~~c.~~ Any public school courses in which the child intends to participate and the school district offering the courses; and
  - g.~~d.~~ Any extracurricular activities in which the child intends to participate and the school district or approved nonpublic school offering the activities.
2. The statement must be accompanied by a copy of the child's immunization record and proof of the child's identity as required by section 12-60-26.
3. The superintendent of the child's school district of residence or if no superintendent is employed, the county superintendent of schools for the child's county of residence shall report the number of statements of intent that have been filed in accordance with this section to the superintendent of public instruction at the time and in the manner required by the superintendent of public instruction.

**SECTION 2. AMENDMENT.** Section 15.1-23-15 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-23-15. Child with a developmental disability - Home education - Progress reports.**

1. On or before November first, February first, and May first of each school year, a parent supervising home education for a child with a developmental disability under section 15.1-23-14 shall file with the superintendent of the child's school district of residence progress reports prepared by the services plan team selected under section 15.1-23-14. If at any time the services plan team agrees that the child is not benefiting from home education making adequate progress or maintaining progress made based on academic ability, the team shall notify the superintendent of the child's school district of residence and request that the child be evaluated by a multidisciplinary team appointed by the superintendent of the child's school district of residence.
2. The superintendent of the child's school district of residence shall forward copies of all documentation required by this section to the superintendent of public instruction.

Approved March 20, 2023

Filed March 21, 2023

## CHAPTER 194

### HOUSE BILL NO. 1337

(Representatives Koppelman, Dyk, Heilman, Longmuir, Marschall)  
(Senator Clemens)

AN ACT to create and enact a new section to chapter 15.1-27 of the North Dakota Century Code, relating to school safety and security measures; and to provide for a report.

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

**SECTION 1.** A new section to chapter 15.1-27 of the North Dakota Century Code is created and enacted as follows:

#### **School safety and security measures - Report to superintendent of public instruction and legislative management.**

1. As used in this section, "school safety and security measures" include:
  - a. Security planning;
  - b. Purchasing security-related technology, including metal detectors, protective lighting, surveillance and monitoring equipment, alarms, special emergency communications equipment, electronic locksets, deadbolts, theft control devices, building access controls, and other similar security devices;
  - c. Training in the use of security-related technology;
  - d. Instituting student, staff, and visitor identification systems, including criminal background check software;
  - e. Updating and exercising school emergency preparedness plans;
  - f. Strengthening partnerships with public safety officials and local law enforcement;
  - g. Modifying, improving, updating, or strengthening the interior or exterior of any school building to prevent unauthorized access to the school; and
  - h. Installing or constructing any barrier on or around school property to prevent unauthorized access to the school.
2. Each school district shall provide an annual report to the superintendent of public instruction before December first, providing the categories and amount spent on school safety and security measures during the previous school year. The superintendent of public instruction shall provide the annual report to the legislative management.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 195

### SENATE BILL NO. 2380

(Senator Davison)

AN ACT to amend and reenact section 15.1-27-16 of the North Dakota Century Code, relating to administrative cost-sharing for cooperating districts and special education units; and to provide an appropriation.

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

**SECTION 1. AMENDMENT.** Section 15.1-27-16 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-16. Per student payments - Administrative cost-sharing - Cooperating districts and special education units. (Effective through June 30, 20242026)**

1. If any school district receiving payments under this chapter cooperates with another school district for the joint provision of educational services under a plan approved by the superintendent of public instruction, the superintendent of public instruction shall, notwithstanding the provisions of section 15.1-27-03.2, create and assign a separate weighting factor that allows the cooperating districts to receive, for a period of four years, a payment rate equivalent to that which each district would have received had the cooperative plan not taken effect. The superintendent of public instruction shall compute the separate weighting factor to four decimal places and that weighting factor is effective for the duration of the cooperative plan.
2. A school district that is cooperating with another school district under a cooperative plan approved by the superintendent of public instruction, and which has taxable property located in the same city as the other school district under the cooperative plan, may not be required as part of the cooperative plan to:
  - a. Provide unduplicated grade level services; or
  - b. Share administrative personnel.
3. If any school district in the state receiving payments under this chapter or any special education unit in the state cooperates with another school district or special education unit to jointly employ or contract with ~~both~~ a superintendent and/or a school district business manager, or both, or to jointly employ or contract with ~~both~~ a special education unit director and/or a special education unit business manager, or both, the superintendent of public instruction shall provide partial reimbursement of the ~~combined salaries~~ salary of the superintendent and/or the school district business manager, or both, or partial reimbursement of the ~~combined salaries~~ salary of the special education unit director and/or the special education unit business manager, or both, as follows:

- a. If the ~~combined salaries exceed three~~salary exceeds two hundred thousand dollars, the amount of the reimbursement must be calculated based upon ~~three~~two hundred thousand dollars. Each cooperating school district or special education unit shall receive a prorated share of the reimbursement percentages listed below each year for four years. The prorated reimbursement is based on the percentage of full-time equivalency that the superintendent ~~and~~school district business manager, or both, or the special education unit director ~~and~~special education unit business manager, or both, are employed or contracted by each district or special education unit. The percentage of reimbursement for the ~~combined salaries~~salary of the jointly hired superintendent ~~and~~school district business manager, or both, or of the jointly hired special education unit director ~~and~~special education unit business manager, or both, must be as follows:
- (1) If two schools or special education units are cooperating, ten percent of the ~~combined salaries~~salary;
  - (2) If three schools or special education units are cooperating, fifteen percent of the ~~combined salaries~~salary;
  - (3) If four schools or special education units are cooperating, twenty percent of the ~~combined salaries~~salary; and
  - (4) If five or more schools or special education units are cooperating, twenty-five percent of the ~~combined salaries~~salary.
- b. To be eligible for reimbursement under this subsection, the cooperating school districts or special education units must:
- (1) Have been approved by the superintendent of public instruction and have implemented their administrative cost-sharing program after June 30, 2022; and
  - (2) Submit the ~~salaries~~salary of the superintendent ~~and~~school district business manager, or both, or the ~~salaries~~salary of the special education unit director ~~and~~special education unit business manager, or both, to the superintendent of public instruction by June first of each year.

**Per student payments - Cooperating districts. (Effective after June 30, 20242026)**

1. If any school district receiving payments under this chapter cooperates with another school district for the joint provision of educational services under a plan approved by the superintendent of public instruction, the superintendent of public instruction shall, notwithstanding the provisions of section 15.1-27-03.2, create and assign a separate weighting factor that allows the cooperating districts to receive, for a period of four years, a payment rate equivalent to that which each district would have received had the cooperative plan not taken effect. The superintendent of public instruction shall compute the separate weighting factor to four decimal places and that weighting factor is effective for the duration of the cooperative plan.
2. A school district that is cooperating with another school district under a cooperative plan approved by the superintendent of public instruction, and

which has taxable property located in the same city as the other school district under the cooperative plan, may not be required as part of the cooperative plan to:

- a. Provide unduplicated grade level services; or
- b. Share administrative personnel.

**SECTION 2. APPROPRIATION - DEPARTMENT OF PUBLIC INSTRUCTION - COOPERATING SCHOOL DISTRICT AND SPECIAL EDUCATION UNIT ADMINISTRATIVE COST-SHARING REIMBURSEMENT PROGRAM.** 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 public instruction for the purpose of providing administrative cost-sharing reimbursements to eligible cooperating school districts and special education units in the state, for the biennium beginning July 1, 2023, and ending June 30, 2025.

Approved April 21, 2023

Filed April 24, 2023

## CHAPTER 196

### HOUSE BILL NO. 1238

(Representatives Schreiber-Beck, Nathe)  
(Senators Elkin, Kreun)

AN ACT to amend and reenact section 15.1-27-35.3 of the North Dakota Century Code, relating to extending the moratorium on the unobligated general fund balance deductions from state aid formula payments; and to provide for a legislative management study regarding the impact of the ending fund balance on school credit and school efficacy.

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

**SECTION 1. 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.**

1. a. Except as provided in subdivision b, beginning July 1, ~~2023~~2027, the superintendent of public instruction shall determine the amount of payments due to 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 thirty-five percent of its actual expenditures, plus fifty thousand dollars.
- b. The superintendent of public instruction shall determine the amount of payments due to 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 thirty-five percent of its actual expenditures, plus one hundred thousand dollars if the school district is in a cooperative agreement with another school district to share academic resources, and the school districts are considering reorganization under chapter 15.1-12. An eligible school district may receive payments under this provision for a maximum of two years.
2. For purposes of this section, a district's unobligated general fund balance includes all moneys in the district's miscellaneous fund, as established under section 57-15-14.2, but does not include federal impact aid funding.

#### **SECTION 2. LEGISLATIVE MANAGEMENT STUDY - IMPLEMENTATION OF PARAMETERS FOR SCHOOL DISTRICT ENDING FUND BALANCES.**

1. During the 2023-24 interim, the legislative management shall study the implementation of effective parameters for the ending fund balance for a school district so a school district is able to achieve credit scores sufficient to bond at a reduced cost to taxpayers while ensuring equitable and adequate education. The study must include:
  - a. Identification of efficient ways to analyze information on district expenditures;

- b. A review of the ending fund balance's impact on a district's short- and long-range planning, related facilities, staffing, and programming;
  - c. An evaluation of possible trends between state investment, district expenditures, and student performance; and
  - d. A review of the dramatic increase in behavioral and mental health issues of students, which are addressed by schools with school budgets, in addition to the traditional scope of academic preparation.
2. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 197

### HOUSE BILL NO. 1161

(Representatives Klemin, Motschenbacher, Novak, Schreiber-Beck)  
(Senators Axtman, Elkin, Patten)

AN ACT to amend and reenact subsection 3 of section 15.1-36-08 of the North Dakota Century Code, relating to eligibility for school construction loans.

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

<sup>107</sup> **SECTION 1. AMENDMENT.** Subsection 3 of section 15.1-36-08 of the North Dakota Century Code is amended and reenacted as follows:

3. To be eligible for a loan under this section, the board of a school district shall:
  - a. Propose a new construction or remodeling project with a cost of at least one million dollars and an expected utilization of at least thirty years;
  - b. Obtain the approval of the superintendent of public instruction for the project under section 15.1-36-01;
  - c. (1) Publish in the official newspaper of the district the information regarding the proposed estimated additional millage and the dollar increase per one thousand dollars of taxable valuation in accordance with section 21-03-13 along with the notice of the election ~~to authorize the school construction bond issuance~~ in accordance with section 21-03-12 or along with the initial resolution in accordance with subsection 7 of section 21-03-07; and  
(2) Post the information on the school district's website ~~preceding before the date of the election to authorize the school construction bond issuance~~ or during the protest period in accordance with chapter 21-03;
  - d. Receive authorization for a bond issue in accordance with chapter 21-03; and
  - e. Submit a completed application to the Bank of North Dakota.

Approved March 14, 2023

Filed March 15, 2023

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<sup>107</sup> Section 15.1-36-08 was also amended by section 12 of Senate Bill No. 2233, chapter 95, and section 11 of Senate Bill No. 2284, chapter 173.

## CHAPTER 198

### HOUSE BILL NO. 1249

(Representatives Koppelman, Cory, Kasper, Louser, Meier, Novak, VanWinkle)  
(Senators Boehm, Estenson, Larson, Myrdal, Paulson)

AN ACT to create and enact chapter 15.1-39 of the North Dakota Century Code, relating to requiring schools to designate their athletic teams and sports for male, female, or coed participation and limitations on use of governmental property for athletic events.

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

**108 SECTION 1.** Chapter 15.1-39 of the North Dakota Century Code is created and enacted as follows:

##### **15.1-39-01. Definitions.**

As used in this chapter:

1. "School" means a public school or a not-for-profit nonpublic school whose athletic teams compete against a public school.
2. "Sex" means the biological state of being female or male, based on an individual's nonambiguous sex organs, chromosomes, and endogenous hormone profile at birth.
3. "Student" means an individual enrolled at a school.

##### **15.1-39-02. Designation of athletic teams.**

1. An interscholastic or intramural athletic team or sport sponsored by a school must be expressly designated as one of the following based on the sex of the intended participants:
  - a. "Males", "men", or "boys";
  - b. "Females", "women", or "girls"; or
  - c. "Coed" or "mixed".
2. An athletic team or sport designated for "females", "women", or "girls" may not be open to students of the male sex.
3. This section may not be construed to restrict the eligibility of a student to participate in interscholastic or intramural athletic teams or sports designated as "males", "men", or "boys" or designated as "coed" or "mixed".

##### **15.1-39-03. Adverse action against school prohibition.**

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<sup>108</sup> Section 15.1-39-01 was amended by section 4 of House Bill No. 1474, chapter 66.

A government entity, a licensing or accrediting organization, or an athletic association or organization may not entertain a complaint, open an investigation, or take any other adverse action against a school for maintaining separate interscholastic or intramural athletic teams or sports for students of the female sex.

**15.1-39-04. Cause of action.**

1. A student who is deprived of an athletic opportunity or who suffers direct or indirect harm as a result of a school knowingly violating this chapter has a private cause of action for injunctive relief, damages, and any other relief available under law against the school.
2. A student subject to retaliation or other adverse action by a school or athletic association or organization as a result of reporting a violation of this chapter to an employee or representative of the school or athletic association or organization, or to a state or federal agency with oversight of schools in the state has a private cause of action for injunctive relief, damages, and any other relief available under law against the school or athletic association or organization.
3. A school that suffers direct or indirect harm as a result of a violation of this chapter has a private cause of action for injunctive relief, damages, and any other relief available under law against the government entity, licensing or accrediting organization, or athletic association or organization.
4. A civil action must be initiated within two years after the harm occurred. A person that prevails on a claim brought pursuant to this section is entitled to monetary damages, including for any psychological, emotional, and physical harm suffered, reasonable attorney's fees and costs, and any other appropriate relief.

Approved April 11, 2023

Filed April 12, 2023



# ELECTIONS

## CHAPTER 199

### HOUSE BILL NO. 1431

(Representatives Louser, Bosch, D. Johnson, Kasper, Klemin, Lefor, Schatz, Schauer, Wagner)  
(Senators Hogue, Vedaa)

AN ACT to amend and reenact section 16.1-01-04.1 and subsection 2 of section 16.1-15-08 of the North Dakota Century Code, relating to proof of citizenship.

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

**SECTION 1. AMENDMENT.** Section 16.1-01-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-01-04.1. Identification verifying eligibility as an elector.**

1. A qualified elector shall provide a valid form of identification to the proper election official before receiving a ballot for voting.
2. The identification must provide the following information regarding the elector:
  - a. Legal name;
  - b. Current residential street address in North Dakota; and
  - c. Date of birth.
3. a. A valid form of identification is:
  - (1) A driver's license or nondriver's identification card issued by the North Dakota department of transportation; or
  - (2) An official form of identification issued by a tribal government to a tribal member residing in this state.
- b. If an individual's valid form of identification does not include all the information required under subsection 2 or the information on the identification is not current, the identification must be supplemented by presenting any of the following issued to the individual which provides the missing or outdated information:
  - (1) A current utility bill;
  - (2) A current bank statement;
  - (3) A check issued by a federal, state, or local government;

- (4) A paycheck;
  - (5) A document issued by a federal, state, or local government; or
  - (6) A printed document containing all of the information required by subsection 2 issued by an institution of higher education for an enrolled student residing in the state and containing the institution's letterhead or seal, along with a student photo identification card issued by the institution and containing the student's photograph and legal name.
4. The following forms of identification are valid for the specified individuals living under special circumstances who do not possess a valid form of identification under subsection 3.
    - a. For an individual living in a long-term care facility, a long-term care certificate prescribed by the secretary of state and issued by a long-term care facility in this state;
    - b. For a uniformed service member or immediate family member temporarily stationed away from the individual's residence in this state, or a resident of the state temporarily living outside the country, a current military identification card or passport; and
    - c. For an individual living with a disability that prevents the individual from traveling away from the individual's home, the signature on an absentee or mail ballot application from another qualified elector who, by signing, certifies the applicant is a qualified elector.
  5. If an individual is not able to show a valid form of identification but asserts qualifications as an elector in the precinct in which the individual desires to vote, the individual may mark a ballot that must be securely set aside securely in a sealed envelope designed by the secretary of state. After the ballot is set aside, the individual may show a valid form of identification to either a polling place election board member if the individual returns to the polling place before the polls close, or to an employee of the office of the election official responsible for the administration of the election via print or electronic means before the meeting of the canvassing board occurring on the thirteenth day after the election. Each ballot set aside under this subsection must be presented to the members of the canvassing board for proper inclusion or exclusion from the tally.
  6. If an individual presents a nondriver identification card issued under subsection 2 of section 39-06-03.1 or an operator's license issued under section 39-06-14, and the card or license indicates the individual is a noncitizen, but the individual asserts valid citizenship, the individual may mark a ballot that must be set aside securely in a sealed envelope designed by the secretary of state. After the ballot is set aside, the individual may present a nondriver identification card issued under subsection 2 of section 39-06-03.1 or an operator's license issued under section 39-06-14 that no longer reflects that the individual is a noncitizen, to the election official responsible for the administration of the election via print or electronic means before the meeting of the canvassing board occurring on the thirteenth day after the election. Each ballot set aside under this subsection must be presented to the members of the canvassing board for proper inclusion in or exclusion from the

tally. This section does not affect any associated consent decree or administrative rules adopted related to a consent decree consented to or enacted before August 1, 2023.

7. The secretary of state shall develop uniform procedures for the requirements of ~~subsections~~ subsections 5 and 6 which must be followed by the election official responsible for the administration of the election.

**SECTION 2. AMENDMENT.** Subsection 2 of section 16.1-15-08 of the North Dakota Century Code is amended and reenacted as follows:

2. Each ballot within a sealed envelope set aside for an individual ~~who was unable to provide a valid form of identification when appearing to vote in the election~~ as outlined in subsections 5 and 6 of section 16.1-01-04.1 must be delivered to the election official responsible for the administration of the election so the envelope containing the ballot is available if the individual for whom the ballot was set aside appears in the official's office to verify the individual's eligibility as an elector. The verified and unverified ballots set aside must be delivered to the members of the canvassing board for proper inclusion in or exclusion from the canvass of votes.

Approved April 6, 2023

Filed April 10, 2023

## CHAPTER 200

### HOUSE BILL NO. 1324

(Representatives Kasper, Koppelman, Louser, Rohr, D. Ruby, Steiner, Vetter,  
Vigesaa)  
(Senator Vedaa)

AN ACT to amend and reenact section 16.1-01-10 of the North Dakota Century Code, relating to sufficiency of petitions as determined by the secretary of state.

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

**SECTION 1. AMENDMENT.** Section 16.1-01-10 of the North Dakota Century Code is amended and reenacted as follows:

#### **16.1-01-10. Secretary of state to pass upon sufficiency of petitions - Method - Time limit.**

1. The secretary of state shall have a reasonable period, not to exceed thirty-five days, in which to pass upon the sufficiency of any petition mentioned in section 16.1-01-09. The secretary of state shall 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 from which the secretary of state may exercise the secretary's judgment as to the validity of the individual signatures or groupings of signatures and other irregularities in the petition, thereby determining whether those signatures are to be counted as part of the necessary signature amount.~~ Signatures determined by the secretary of state to be invalid may not be counted and ~~if the number of valid signatures received is less than the required number of signatures to place the measure on the ballot, the secretary of state may not allow the measure to be placed on the ballot. When the secretary of state does not approve the measure to be placed on the ballot due to an insufficient petition, the action is presumed to be lawful, unless the presumption is rebutted by clear and convincing evidence that the action of the secretary of state was unlawful. All violations of law discovered by the secretary of state must be reported to the attorney general for prosecution.~~
2. For purposes of this section "clear and convincing evidence" means that degree of proof which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition on which the challenging party has the burden of proof is true.

Approved April 20, 2023

Filed April 21, 2023

## CHAPTER 201

### SENATE BILL NO. 2292

(Senators K. Roers, Barta)  
(Representatives Louser, Satrom, Schauer)

AN ACT to amend and reenact sections 16.1-01-12 and 16.1-05-09 of the North Dakota Century Code, relating to election offenses and election observers; and to provide a penalty.

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

<sup>109</sup> **SECTION 1. AMENDMENT.** Section 16.1-01-12 of the North Dakota Century Code is amended and reenacted as follows:

##### **16.1-01-12. Election offenses - Penalty.**

1. It is unlawful for an individual, measure committee as described in section 16.1-08.1-01, or other organization to:
  - a. Fraudulently alter another individual's ballot, substitute one ballot for another, or otherwise defraud a voter of that voter's vote.
  - b. ~~Obstruct~~Cause a disturbance, breach the peace, or obstruct a qualified elector or a member of the election board on the way to or at a polling place.
  - c. Vote more than once in any election.
  - d. Knowingly vote in the wrong election precinct or district.
  - e. Disobey the lawful command of an election officer as defined in chapter 16.1-05.
  - f. Knowingly exclude a qualified elector from voting or knowingly allow an unqualified individual to vote.
  - g. Knowingly vote when not qualified to do so.
  - h. Sign an initiative, referendum, recall, or any other election petition when not qualified to do so.
  - i. Circulate an initiative, referendum, recall, or any other election petition not in its entirety or when unqualified to do so.
  - j. Pay or offer to pay any individual, measure committee, or other organization, or receive payment or agree to receive payment, on a basis related to the number of signatures obtained for circulating an initiative, referendum, or recall petition. This subsection does not prohibit the

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<sup>109</sup> Section 16.1-01-12 was also amended by section 1 of House Bill No. 1230, chapter 202.

- payment of salary and expenses for circulation of the petition on a basis not related to the number of signatures obtained, as long as the circulators file the intent to remunerate before submitting the petitions and, in the case of initiative and referendum petitions, fully disclose all contributions received pursuant to chapter 16.1-08.1 to the secretary of state upon submission of the petitions. The disclosure of contributions received under this section does not affect the requirement to file a pre-election report by individuals or organizations soliciting or accepting contributions for the purpose of aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure placed upon a statewide ballot by action of the legislative assembly under chapter 16.1-08.1. Any signature obtained in violation of this subdivision is void and may not be counted.
- k. Willfully fail to perform any duty of an election officer after having accepted the responsibility of being an election officer by taking the oath as prescribed in this title.
  - l. Willfully violate any rule adopted by the secretary of state pursuant to this title.
  - m. Willfully make any false canvass of votes, or make, sign, publish, or deliver any false return of an election, knowing the canvass or return to be false; or willfully deface, destroy, or conceal any statement or certificate entrusted to the individual's or organization's care.
  - n. Destroy ballots, ballot boxes, election lists, or other election supplies except as provided by law, or negatively impact the confidentiality, integrity, or availability of any system used for voting.
  - o. Sign a name other than that individual's own name to an initiative, referendum, recall, or any other election petition.
2.
    - a. A violation of subdivisions b, e, f, or h through l of subsection 1 is a class A misdemeanor.
    - b. A violation of subdivisions a, c, d, g, or m of subsection 1 is a class C felony.
    - c. A violation of subdivision n of subsection 1 is a class C felony.
    - d. A violation of subdivision o of subsection 1 is a class A misdemeanor if an individual signs one or two names other than the individual's own name to a petition and is a class C felony if an individual signs more than two names other than the individual's own name to a petition.
    - e. An organization, as defined in section 12.1-03-04, that violates this section is subject to the organizational fines in section 12.1-32-01.1. The court in which the conviction is entered shall notify the secretary of state of the conviction and shall order the secretary of state to revoke the certificate of authority of any convicted organization or limited liability company. The organization may not reapply to the secretary of state for authorization to do business under any name for one year upon conviction of a class A misdemeanor and for five years upon conviction of a class C felony under this section.

- f. An individual who is a member of an organization may be convicted of a violation as an accomplice under section 12.1-03-01.
3. Every act this chapter makes criminal when committed with reference to the election of a candidate is equally criminal when committed with reference to the determination of a question submitted to qualified electors to be decided by votes cast at an election.

**SECTION 2. AMENDMENT.** Section 16.1-05-09 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-05-09. Election observers.**

1. Election observers must be allowed uniform and nondiscriminatory access to all stages of the election process, including the certification of election technologies, early voting, absentee voting, voter appeals, vote tabulation, and recounts. Any individual, except a candidate whose name is on a ballot in a voting place where the ballot is used, may be an election observer under this section if the individual informs the election inspector of the individual's intent to serve as an election observer. Each polling place must be arranged in a manner that permits each election observer to be positioned in a location where the election observer can plainly view and hear the occurrences of the polling place, without infringing on voter privacy.
2. An election observer must wear a badge with the name of the individual and the name of the organization the individual is representing. An election observer may not wear any campaign material advocating voting for or against a candidate or for or against any position on a question on the ballot. An election observer may not interfere with any voter in the preparation or casting of the voter's ballot or hinder or prevent the performance of the duties of any election official.

Approved March 22, 2023

Filed March 23, 2023

## CHAPTER 202

### HOUSE BILL NO. 1230

(Representatives Nathe, Bosch, Boschee, Dockter, Hagert, Heinert, Lefor, Stemen)  
(Senators Hogue, Meyer, Patten)

AN ACT to amend and reenact section 16.1-01-12 of the North Dakota Century Code, relating to fraudulent signatures on an initiated petition; and to provide a penalty.

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

<sup>110</sup> **SECTION 1. AMENDMENT.** Section 16.1-01-12 of the North Dakota Century Code is amended and reenacted as follows:

##### **16.1-01-12. Election offenses - Penalty.**

1. It is unlawful for an individual, measure committee as described in section 16.1-08.1-01, or other organization to:
  - a. Fraudulently alter another individual's ballot, substitute one ballot for another, or otherwise defraud a voter of that voter's vote.
  - b. Obstruct a qualified elector on the way to a polling place.
  - c. Vote more than once in any election.
  - d. Knowingly vote in the wrong election precinct or district.
  - e. Disobey the lawful command of an election officer as defined in chapter 16.1-05.
  - f. Knowingly exclude a qualified elector from voting or knowingly allow an unqualified individual to vote.
  - g. Knowingly vote when not qualified to do so.
  - h. Sign an initiative, referendum, recall, or any other election petition when not qualified to do so.
  - i. Circulate an initiative, referendum, recall, or any other election petition not in its entirety or when unqualified to do so.
  - j. Pay or offer to pay any individual, measure committee, or other organization, or receive payment or agree to receive payment, on a basis related to the number of signatures obtained for circulating an initiative, referendum, or recall petition. This subsection does not prohibit the payment of salary and expenses for circulation of the petition on a basis not related to the number of signatures obtained, as long as the circulators file the intent to remunerate before submitting the petitions and, in the

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<sup>110</sup> Section 16.1-01-12 was also amended by section 1 of Senate Bill No. 2292, chapter 201.

- case of initiative and referendum petitions, fully disclose all contributions received pursuant to chapter 16.1-08.1 to the secretary of state upon submission of the petitions. The disclosure of contributions received under this section does not affect the requirement to file a pre-election report by individuals or organizations soliciting or accepting contributions for the purpose of aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure placed upon a statewide ballot by action of the legislative assembly under chapter 16.1-08.1. Any signature obtained in violation of this subdivision is void and may not be counted.
- k. Willfully fail to perform any duty of an election officer after having accepted the responsibility of being an election officer by taking the oath as prescribed in this title.
  - l. Willfully violate any rule adopted by the secretary of state pursuant to this title.
  - m. Willfully make any false canvass of votes, or make, sign, publish, or deliver any false return of an election, knowing the canvass or return to be false; or willfully deface, destroy, or conceal any statement or certificate entrusted to the individual's or organization's care.
  - n. Destroy ballots, ballot boxes, election lists, or other election supplies except as provided by law, or negatively impact the confidentiality, integrity, or availability of any system used for voting.
  - o. Sign a name other than that individual's own name to an initiative, referendum, recall, or any other election petition.
  - p. Willfully submit an initiative or referendum petition that contains one or more fraudulent signatures.
2.
    - a. A violation of subdivisions b, e, f, or h through l of subsection 1 is a class A misdemeanor.
    - b. A violation of subdivisions a, c, d, g, or m of subsection 1 is a class C felony.
    - c. A violation of subdivision n of subsection 1 is a class C felony.
    - d. A violation of subdivision o of subsection 1 is a class A misdemeanor if an individual signs one or two names other than the individual's own name to a petition and is a class C felony if an individual signs more than two names other than the individual's own name to a petition.
    - e. An organization, as defined in section 12.1-03-04, that violates this section is subject to the organizational fines in section 12.1-32-01.1. The court in which the conviction is entered shall notify the secretary of state of the conviction and shall order the secretary of state to revoke the certificate of authority of any convicted organization or limited liability company. The organization may not reapply to the secretary of state for authorization to do business under any name for one year upon conviction of a class A misdemeanor and for five years upon conviction of a class C felony under this section, except an organization operating a signature gathering

- business, or similar enterprise, that violates subdivision p of subsection 1, and is convicted of fraud, is subject to a class A misdemeanor and may not reapply to the secretary of state for authorization to do business under any name for five years following the entry of judgment.
- f. A violation of subdivision p of subsection 1 by any member of a measure committee, including an initiative or referendum sponsoring committee or an agent acting on behalf of, or in conjunction with, a measure committee for the purpose of collecting signatures for a petition under this chapter is subject to a civil penalty of not more than three thousand dollars. The civil penalty may be recovered in an action brought in the district court of Burleigh County by the attorney general.
- g. An individual who is a member of an organization may be convicted of a violation as an accomplice under section 12.1-03-01.
3. Every act this chapter makes criminal when committed with reference to the election of a candidate is equally criminal when committed with reference to the determination of a question submitted to qualified electors to be decided by votes cast at an election.

Approved April 18, 2023

Filed April 19, 2023

## CHAPTER 203

### SENATE BILL NO. 2352

(Senators Hogue, Klein, K. Roers)  
(Representatives Bosch, Lefor, Schauer)

AN ACT to create and enact a new section to chapter 16.1-03 of the North Dakota Century Code, relating to liability of officers and executive committee members of a political organization.

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

**SECTION 1.** A new section to chapter 16.1-03 of the North Dakota Century Code is created and enacted as follows:

##### **Liability of officers and members.**

1. Officers and executive committee members are immune from civil liability for any act or omission relating to their service or function as an officer or executive committee member, unless the act or omission constitutes gross or willful negligence or gross or willful misconduct.
2. Members of a political organization are neither obligated to pay, nor liable upon, any political organization obligation.

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 204

### HOUSE BILL NO. 1192

(Representatives Louser, Cory, Karls, Kasper, Satrom, Schauer, Steiner, Vetter)  
(Senators Meyer, K. Roers, Vedaa)

AN ACT to amend and reenact subsection 5 of section 16.1-05-04, section 16.1-06-03, subsection 8 of section 16.1-06-14, sections 16.1-06-15 and 16.1-06-20, subsection 1 of section 16.1-07-13.1, and sections 16.1-11.1-06, 16.1-14-04, 16.1-15-02, 16.1-15-22, 16.1-15-25, and 40-21-09 of the North Dakota Century Code, relating to electronic voting systems, electronic voting devices, absentee voting, meeting of presidential electors, and canvassing boards.

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

**SECTION 1. AMENDMENT.** Subsection 5 of section 16.1-05-04 of the North Dakota Century Code is amended and reenacted as follows:

5. All members of the election board shall distribute ballots and other election materials to electors. An election judge from each party represented on the election board shall give any assistance requested by electors in marking ballots or operating electronic voting system devices.

**SECTION 2. AMENDMENT.** Section 16.1-06-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **16.1-06-03. Official ballots only to be used.**

The official ballot prepared by the county auditor or the local auditor or clerk must contain the name of each candidate whose name has been certified to or filed with such auditor or clerk in the manner provided in this title. Ballots other than official ballots prepared by the county auditor or local auditor or clerk may not be cast or counted in any election governed by this title. The list of officers and candidates and the statements of measures and questions to be submitted to the voters must be deemed an official ballot in precincts in which electronic voting systems are used.

**SECTION 3. AMENDMENT.** Subsection 8 of section 16.1-06-14 of the North Dakota Century Code is amended and reenacted as follows:

8. Permit voting by ballot or by entering directly into a computer or other electronic device by means of a touchscreen or other data entry device.

**SECTION 4. AMENDMENT.** Section 16.1-06-15 of the North Dakota Century Code is amended and reenacted as follows:

#### **16.1-06-15. Mandatory testing of electronic voting systems before each election and after tabulation of ballots.**

1. All electronic voting systems used in this state must be tested according to guidelines established by the secretary of state and as follows to ascertain whether the automatic tabulating equipment will accurately count the votes cast for all offices and measures. The testing must be conducted prior to each

election at which the system will be used. The testing must be done by the county auditor or county auditor's designee, and after each test, the testing materials and any preaudited ballots used during the test must be sealed and retained in the same manner as election materials after an election.

2. The test of an ~~electronic~~ voting system employing paper ballots must be conducted by processing a preaudited group of ballots on which are recorded a predetermined number of valid votes for each candidate and measure and must include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. During the test a different number of valid votes must be assigned to each candidate for an office and for and against each measure. If an error is detected, the cause of it must be ascertained and corrected, and an errorless count must be secured and filed as provided in this section.
3. The test must be conducted at least one week before the election. One week before the test is conducted, the county auditor must send the district chairman of each political party having a candidate on the ballot a notice of the test. The notice must state the time, place, and date of the test or tests and that the district chairman or district chairman's designee may attend.
4. At the conclusion of the test, the programming for each ~~electronic~~ voting device must be sealed within the device with a unique numbered seal that must be verified by the election inspector before the opening of the polls to make sure the programming has not been removed from the device.
5. After each election, the secretary of state shall order a random testing of the voting system programming for one precinct in each county of the state according to logic and accuracy testing procedures detailed in subsection 2 and as may be further defined by the secretary of state in writing. This test is to be conducted before the meeting of the county canvassing board.

**SECTION 5. AMENDMENT.** Section 16.1-06-20 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-06-20. Election inspector and judges to display material and provide instruction.**

In addition to other duties provided by law, the election inspector and judges shall provide adequate instruction on the use of the ~~electronic~~ voting device to each voter before the voter enters the voting booth.

**SECTION 6. AMENDMENT.** Subsection 1 of section 16.1-07-13.1 of the North Dakota Century Code is amended and reenacted as follows:

1. If an election official, absentee ballot precinct election board, or the canvassing board has reason to suspect the absent voter's signatures on the application and the affidavit on the returned ballot envelope do not match, the election official shall notify the absent voter the signatures do not appear to match. The notification must include instructions by which the absent voter may confirm the validity of the signatures, a statement that verification is required before the ballot can be counted, the date and time of the canvassing board meeting, and a statement that verification must be completed by the absent voter before close of the meeting of the canvassing board occurring ~~six~~thirteen days after the election.

**SECTION 7. AMENDMENT.** Section 16.1-11.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11.1-06. Canvass of votes - Mail ballot precinct.**

The county auditor shall appoint a mail ballot precinct election board for the purpose of counting mail ballots in the same manner as prescribed in section 16.1-07-12.1. The board may begin scanning the ballots at any time beginning on ~~the day~~ ~~three business days~~ before election day and the closing of the polls on election day. Results from the mail ballot 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. The board shall comply with the requirements of sections 16.1-15-04 through 16.1-15-12 as applicable. A county conducting a mail ballot election constitutes one voting area, and ballots need not be sorted according to precinct or ward unless necessary for the administration of the election.

**SECTION 8. AMENDMENT.** Section 16.1-14-04 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-14-04. Meeting of presidential electors.**

Presidential electors shall meet at one p.m. in the office of the governor in the state capitol on the first ~~Monday~~ ~~Tuesday~~ after the second Wednesday in December next following their appointments by election for the purpose of casting their ballots as members of the electoral college. The secretary of state shall notify the electors of the date of the meeting.

**SECTION 9. AMENDMENT.** Section 16.1-15-02 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-02. Board of election to generate canvass reports - Location - Public may attend.**

After the polls are closed, the inspector of elections and the judges immediately shall generate the canvass report from the ~~electronic~~ voting system. The ballots counted by the machine must be equal in number with the names on the poll clerks' lists. If the numbers are not equal, the pollbooks are to be rechecked to find the discrepancy. The canvass must continue without adjournment until completed and must be open to the public. Ballots may not be removed to another location before the canvass report is generated after the ballot boxes have been opened. Except in unusual and compelling circumstances, the canvass shall occur at the polling place. If good and substantial reasons exist for the removal of the ballots and election records to another location for canvass, the removal must be approved by the election board. Upon approval of a change of location by the election board as provided in this section, the approximate time and location of the canvass must be prominently posted on the main entrance to the polling place, the ballots and records must be moved in the presence of the election board, and the canvass as provided in this chapter must proceed immediately upon arrival at the alternate location.

**SECTION 10. AMENDMENT.** Section 16.1-15-22 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-22. County auditor to transmit abstract of votes to secretary of state after primary election.**

The county auditor of each county shall provide to the secretary of state the certified abstract detailed in section 16.1-15-21, under separate political designation or principle, or no-party designation, as the case may be, of the total number of votes cast in the auditor's county and the votes cast for every candidate for nomination according to reporting instructions specified by the secretary of state. The abstract must also include the total number of votes cast for initiated or referred measures and constitutional amendments. The certified abstract must be in the possession of the secretary of state before four p.m. on the ~~eight~~thirteenth day after the primary election.

**SECTION 11. AMENDMENT.** Section 16.1-15-25 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-15-25. County auditor to forward abstract of votes of general election to secretary of state - Contents - Abstract for presidential electors.**

Before four p.m. on the ~~eight~~thirteenth day following any general election, the county auditor of each county shall provide to the secretary of state a certified abstract of the votes cast in the county at the election according to the reporting instructions specified by the secretary of state.

**SECTION 12. AMENDMENT.** Section 40-21-09 of the North Dakota Century Code is amended and reenacted as follows:

**40-21-09. Election districts in council cities - Division and consolidation by ordinance - Ballots to be kept separate by wards.**

Each city operating under the council form of government in which council members are elected at large constitutes an election district or voting precinct, and in all other cities each ward constitutes an election district or voting precinct. Whenever the number of electors in any two or more contiguous wards does not exceed one hundred as determined by the number of votes cast at the last city election, the council, by ordinance, may consolidate those two or more wards into one precinct for voting purposes. In any city containing less than four hundred electors as determined by the number of votes cast at the last city election, the council, by ordinance, may consolidate all the wards of the city into one precinct for voting purposes. An ordinance dividing or consolidating wards must be passed and takes effect before the time of giving notice of the election. Wards and precincts established under this section constitute election districts for all state, county, and city elections. In city elections, separate ballot boxes and pollbooks must be provided and kept for each precinct. The terms "wards", "precincts", and "election districts" have the same meaning except where two or more wards are consolidated into one precinct for voting purposes or where one ward is divided into more than one precinct for voting purposes. This section does not prohibit the use of one building as the election polling place for more than one ward or the installation of ~~electronic~~ voting systems from separate wards in one building.

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 205

### SENATE BILL NO. 2163

(Senators Dever, Magrum)  
(Representatives Dobervich, Karls, Klemin, Meier)

AN ACT to amend and reenact section 16.1-06-09 of the North Dakota Century Code, relating to language on voting ballots.

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

**SECTION 1. AMENDMENT.** Section 16.1-06-09 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-06-09. Constitutional amendments and initiated and referred measures - Manner of stating question - Fiscal impact statement - Explanation of effect of vote - Order of listing.**

1. Constitutional amendments or measures, initiated measures, and referred measures, duly certified to the county auditor by the secretary of state, or any other question or measure to be voted on, except the election of public officers at any primary, general, or special election including officers subject to a recall petition, must, unless otherwise determined by the secretary of state, be stated in full in a legible manner on the ballot. If the secretary of state concludes the amendment or measure is too long to make it practicable to print in full, the secretary of state in consultation with the attorney general shall cause to be printed a concise summary that written in plain, clear, understandable language using words with common, everyday meaning which must fairly represent the substance of the constitutional amendment or initiated or referred measure. After the foregoing statement, the secretary of state shall cause to be printed a statement of the estimated fiscal impact of the constitutional amendment or initiated or referred measure and a concise statement of the effect of an affirmative or negative vote on the constitutional amendment or initiated or referred measure written in plain, clear, understandable language using words with common, everyday meaning. This explanatory statement must be drafted by the secretary of state in consultation with the attorney general. The words "Yes" and "No" must be printed on the ballot at the close of the statement regarding the effect of an affirmative or negative vote, in separate lines with an oval before each statement in which the voter is to indicate how the voter desires to vote on the question by darkening the oval. If two or more amendments or questions are to be voted on, they must be printed on the same ballot.
2. The measures to be submitted to the electors must be grouped and classified as constitutional measures, initiated statutes, or referred statutes and must be placed within such groups or classifications by the secretary of state in the order received, for the purpose of placing them on the ballot. Measures submitted by the legislative assembly must be placed first on the ballot within their classification in the order approved by the legislative assembly. Constitutional measures shall be placed first on the ballot, initiated statutes second, and referred statutes third. After all the measures have been placed

within the appropriate group or classification, all measures must be numbered consecutively, without regard to the various groups or classifications.

Approved March 22, 2023

Filed March 23, 2023

## CHAPTER 206

### HOUSE BILL NO. 1424

(Representatives Conmy, Boschee, Dakane, Dobervich, Ista, Wagner)  
(Senators Hogan, Piepkorn)

AN ACT to amend and reenact subsection 1 of section 16.1-08.1-03.2, subsection 1 of section 16.1-11-06, section 16.1-11-09, subsection 1 of section 16.1-11-11, and subsection 1 of section 16.1-11-16 of the North Dakota Century Code, relating to a candidate's contact information and the form of a nominating petition and a certificate of endorsement.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 16.1-08.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:

1. A political committee as defined in section 16.1-08.1-01 shall register its name ~~and contact information, mailing address, telephone number, and nongovernment issued electronic mail address,~~ its agent's name ~~and contact information, mailing address, telephone number, and nongovernment issued electronic mail address,~~ and a designation as to whether the committee is incorporated solely for the purpose of liability protection, with the secretary of state. A candidate who does not have a candidate committee shall register the candidate's name ~~and contact information and, if, mailing address, telephone number, and nongovernment issued electronic mail address with the secretary of state.~~ If the candidate has an agent, ~~the candidate also shall register the agent's name and contact information, mailing address, telephone number, and nongovernment issued electronic mail address with the secretary of state.~~ The registration required under this section for a candidate or political committee that has not previously registered with the secretary of state must be submitted within fifteen business days of the receipt of any contribution or expenditure made.

**SECTION 2. AMENDMENT.** Subsection 1 of section 16.1-11-06 of the North Dakota Century Code is amended and reenacted as follows:

1. Every candidate for United States senator, United States representative, a state office, including 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 sixty-fourth day before any primary election, either:
  - a. The certificate of endorsement signed by the state or district chairman of any legally recognized political party containing the candidate's name, post-office address, nongovernment issued electronic mail address, and telephone number, the title of the office to which the candidate aspires, and the party which the candidate represents; or
  - b. The nominating petition containing the following:

- (1) The candidate's name, post-office address, nongovernment issued electronic mail 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.
- (2) The name of the party the candidate represents if the petition is for an office under party designation.
- (3) The signatures and printed names of qualified electors, the number of which must be determined as follows:
  - (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.
  - (b) If there was no candidate of a party for a position at the preceding general election, at least three hundred signatures.
  - (c) If the office is under the no-party designation, at least three hundred signatures.
  - (d) If the office is a legislative office, the signatures of at least one percent of the total resident population of the legislative district as determined by the most recent federal decennial census.
- (4) The mailing address and the date of signing for each signer.

**SECTION 3. AMENDMENT.** Section 16.1-11-09 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11-09. Form of certificate of endorsement.**

A certificate of endorsement filed with the proper officer as provided in this chapter must be in substantially the following form:

CERTIFICATE OF ENDORSEMENT

I, \_\_\_\_\_, do certify that I am the state (district) chairman of the \_\_\_\_\_ political party of the \_\_\_\_\_ legislative district (if appropriate) of the state of North Dakota and that \_\_\_\_\_ (insert name of endorsee), residing at \_\_\_\_\_, whose nongovernment issued electronic mail address is \_\_\_\_\_, was duly endorsed for nomination to the office of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, by the \_\_\_\_\_ political party of the \_\_\_\_\_ legislative district (if appropriate), duly convened and organized in accordance with the bylaws of the \_\_\_\_\_ political party and the laws of this state, and do hereby request \_\_\_\_\_ name be printed upon the ballot as a candidate for nomination to the office of \_\_\_\_\_ at the forthcoming primary election to be held on \_\_\_\_\_ of this year.

Dated this \_\_\_\_\_ day of \_\_\_\_\_.

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(signature of state or district chairman)

**SECTION 4. AMENDMENT.** Subsection 1 of section 16.1-11-11 of the North Dakota Century Code is amended and reenacted as follows:

1. The candidate's name, post-office address, nongovernment issued electronic mail address, and telephone number, the title of the office to which the candidate aspires, the appropriate district number if applicable, and whether the petition is intended for nomination for an unexpired term of office if applicable.

**SECTION 5. AMENDMENT.** Subsection 1 of section 16.1-11-16 of the North Dakota Century Code is amended and reenacted as follows:

1. Each nominating petition circulated by candidates for any state, district, county, or other political subdivision office must include or have attached the following information, which must be made available to each signer at the time of signing:
  - a. The candidate's name, address, nongovernment issued electronic mail address, and telephone number and the title of the office to which the candidate aspires, including the appropriate district number if applicable, and whether the petition is intended for a full or unexpired term of office.
  - b. The name of the party the candidate represents if the petition is for an office under party designation.
  - c. The date of the election at which the candidate is seeking nomination or election.

Approved April 4, 2023

Filed April 5, 2023

# FIRES

## CHAPTER 207

### SENATE BILL NO. 2211

(Senators Weber, Bekkedahl, Klein)  
(Representatives Kempenich, Pyle, Warrey)

AN ACT to create and enact a new subsection to section 18-03-01.1, a new subsection to section 26.1-01-03, and a new subdivision to subsection 1 of section 26.1-01-07 of the North Dakota Century Code, relating to the operations of the state fire marshal; to amend and reenact section 18-01-01, subsection 1 of section 18-01-03.1, sections 18-01-04, 18-01-09, 18-01-20, 18-01-35, 18-01-36, 18-03-04, 18-03-05, 18-03-07, 18-04-04, 18-04-04.1, and 18-04-05, subsection 1 of section 18-13-01, subsection 4 of section 18-13-02, subsection 3 of section 18-13-03, subsection 6 of section 18-13-04, subsections 6 and 7 of section 18-13-05, section 18-13-07, and subsection 1 of section 26.1-03-17, relating to the operations of the state fire marshal; and to provide a continuing appropriation.

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

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

**18-01-01. Appointment of state fire marshal - Appointment and salaries of deputies and assistants - Budget.**

The ~~attorney general~~insurance commissioner shall appoint the state fire marshal and supervise the operation of the state fire marshal department. The state fire marshal shall manage the state fire marshal department and shall perform the duties imposed on the state fire marshal by this chapter.

The state fire marshal shall appoint such deputies and other employees as the state fire marshal deems necessary to carry out this chapter within the limits of legislative appropriations.

Before entering upon their duties, the state fire marshal and each deputy appointed under this section shall take and subscribe the constitutional oath of office and file the oath in the office of the secretary of state.

The state fire marshal department ~~must be operated in conjunction~~shall collaborate with the bureau of criminal investigation, and the state fire marshal shall report all suspected cases of arson to the bureau of criminal investigation. The budget for the state fire marshal department must be submitted as part of the ~~attorney general's~~insurance commissioner's budget.

**SECTION 2. AMENDMENT.** Subsection 1 of section 18-01-03.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The state fire marshal and the state fire marshal's deputies may perform fire safety inspections of those facilities required to be inspected under administrative rules of the department of health and human services. The state fire marshal shall charge a fee not to exceed fifty dollars for conducting these fire safety inspections in an amount determined by administrative rules adopted by the state fire marshal. Inspection fees received by the state fire marshal must be deposited into the attorney general's insurance regulatory trust fund operating fund.

**SECTION 3. AMENDMENT.** Section 18-01-04 of the North Dakota Century Code is amended and reenacted as follows:

**18-01-04. Rules for prevention of fires to be issued.**

The state fire marshal, under the supervision of the attorney general insurance commissioner, shall make rules not inconsistent with the provisions of this code for the prevention of fires and shall explain such rules fully to all state, county, and municipal boards and officers. All such rules must be posted in such conspicuous places as will tend to be of the greatest benefit to the residents of the state, and when called upon, the state fire marshal or one of the state fire marshal's assistants shall appear before any public board and explain the benefits derived from compliance with such rules and regulations in the reduction of hazardous conditions and loss by fire.

**SECTION 4. AMENDMENT.** Section 18-01-09 of the North Dakota Century Code is amended and reenacted as follows:

**18-01-09. Investigation by state fire marshal - Complaint to state's attorney bureau of criminal investigation - Records of arson prosecutions.**

If any investigation made pursuant to the provisions of section 18-01-07 is insufficient in the opinion of the state fire marshal, the state fire marshal shall take or cause to be taken the sworn testimony of all persons having any means of knowledge in relation to the matter under investigation and shall cause the same to be reduced to writing. If the state fire marshal is of the opinion that there is evidence sufficient to charge any person with the crime of arson, the state fire marshal shall ~~cause said person to be arrested and charged with such an offense.~~ The state fire marshal shall furnish to the state's attorney of the county in which the crime is alleged to have been committed the ~~names of all witnesses obtained by the state fire marshal~~ furnish to the bureau of criminal investigation and the state's attorney the written report created pursuant to section 18-01-07 and a copy of all the pertinent and material testimony taken in the case. The state fire marshal shall keep a record of the proceedings in all prosecutions for arson and of the results in all cases in which a final disposition is made.

**SECTION 5. AMENDMENT.** Section 18-01-20 of the North Dakota Century Code is amended and reenacted as follows:

**18-01-20. Service of order and notice - Contents of notice - Additional parties - Duty of attorney general insurance commissioner.**

1. There must be served upon the owner, mortgagee, lessee, tenant, occupant, and other persons known to have or claim any interest in the premises described in the order of abatement a copy of the abatement order and a written notice stating:

4-a. The title of the proceeding.

- 2-b. The name of the court in which the proceeding is instituted.
  - 3-c. That the abatement order has been filed in the district court.
  - 4-d. That the state fire marshal will apply to the court for a judgment enforcing the terms of the abatement order.
  - 5-e. That all persons interested in the premises described in the abatement order or in the proceeding in the district court will be required to appear therein and state any objections to the order, within twenty days after the date of service of the notice upon them.
2. The notice must be subscribed by the ~~attorney general~~insurance commissioner who shall appear for the state fire marshal in each such proceeding. Service must be made in the same manner as a summons is required to be served in a civil action. Whenever it appears that persons in addition to those served are necessary or proper parties to the proceeding, the court may order such persons to be brought in by proper service of the order and notice upon them.

**SECTION 6. AMENDMENT.** Section 18-01-35 of the North Dakota Century Code is amended and reenacted as follows:

**18-01-35. Fire and tornado fund fees.**

The ~~attorney general~~insurance commissioner 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. All fees collected under this section must be deposited in the ~~attorney general's operating~~insurance regulatory trust fund.

**SECTION 7. AMENDMENT.** Section 18-01-36 of the North Dakota Century Code is amended and reenacted as follows:

**18-01-36. Petroleum release compensation fund fees.**

The ~~attorney general~~insurance commissioner 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. All fees collected under this section must be deposited in the ~~attorney general's operating~~insurance regulatory trust fund.

**SECTION 8.** A new subsection to section 18-03-01.1 of the North Dakota Century Code is created and enacted as follows:

Report quarterly to the state fire marshal.

**SECTION 9. AMENDMENT.** Section 18-03-04 of the North Dakota Century Code is amended and reenacted as follows:

**18-03-04. Association to furnish bond.**

The North Dakota firefighter's association shall file with the ~~director of the office of management and budget~~the state fire marshal a bond in the penal sum of two thousand dollars conditioned for the faithful disposition of the funds ~~appropriated by the legislative assembly~~distributed from the insurance regulatory trust fund for the use of the association in ~~conducting fire schools~~to carry out this chapter.

**SECTION 10. AMENDMENT.** Section 18-03-05 of the North Dakota Century Code is amended and reenacted as follows:

**18-03-05. Statement of desired appropriation submitted to office of the ~~budget~~state fire marshal.**

Not later than July first of each year next preceding a regular session of the legislative assembly, the ~~director of the budget~~North Dakota firefighter's association shall send to the ~~North Dakota firefighter's association~~ a suitable blank form to be filled out with state fire marshal an itemized statement of the amount of money necessary to promote the efficiency and growth of the different fire departments and fire protection districts of the association and to ~~conduct the fire schools to be held~~carry out this chapter during the succeeding biennium under the direction of the association. ~~The association shall return the blanks properly filled out as provided in section 54-44.1-04.~~

**SECTION 11. AMENDMENT.** Section 18-03-07 of the North Dakota Century Code is amended and reenacted as follows:

**18-03-07. Office of management and budget~~Insurance commissioner to pay sum appropriated to association treasurer.~~**

Not later than the first day of August of each year, the ~~office of management and budget, by warrants prepared and issued by the office and signed by the state auditor,~~insurance commissioner shall pay to the ~~treasurer of the North Dakota firefighter's association~~ the sum appropriated by the legislative assembly for that year one million two hundred thousand dollars from the insurance regulatory trust fund. The sum, however, may not be paid until the treasurer of the association has filed the bond required in section 18-03-04.

**SECTION 12. AMENDMENT.** Section 18-04-04 of the North Dakota Century Code is amended and reenacted as follows:

**18-04-04. Insurance companies to report fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, and commercial multiple peril, and crop hail insurance premium collections - Form furnished by insurance commissioner.**

1. The insurance commissioner, when the commissioner forwards to an insurance company which is issuing policies for fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, and commercial multiple peril, and crop hail insurance in this state the form to be used in submitting its annual statement, shall forward a form containing the names of all cities and all rural fire protection districts or rural fire departments entitled to benefits under the provisions of this chapter. Every insurance company issuing policies for fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, and commercial multiple peril, and crop hail insurance within this state shall complete such form by showing on the form the amount of all premiums received by the insurance company upon such policies issued on property within the corporate limits of each city shown on the form and on property within the boundaries of each rural fire protection district shown on the form or property within the boundaries of each rural fire department as certified by the state fire marshal during the year ending on the preceding thirty-first day of December and shall file the form as a part of the insurance company's annual statement.

2. An insurance company failing to report fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, and commercial multiple peril, and crop hail insurance premium collections on or before March first, on forms prescribed by the insurance commissioner, is subject to the monetary penalties prescribed in section 26.1-03-11.

**SECTION 13. AMENDMENT.** Section 18-04-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**18-04-04.1. Insurance tax distribution fund.**

The insurance tax distribution fund is a special fund in the state treasury. The portion of revenue provided in section 26.1-03-17 must be deposited in the fund for disbursement as provided in this chapter and chapter 23-46, ~~subject to legislative appropriation.~~

**SECTION 14. AMENDMENT.** Section 18-04-05 of the North Dakota Century Code is amended and reenacted as follows:

**18-04-05. Amount due cities, rural fire protection districts, or rural fire departments - Transfer to firefighters death benefit fund - Disbursement to North Dakota firefighter's association - Payments by insurance commissioner - Continuing appropriation.**

1. The insurance commissioner shall disburse funds in the insurance tax distribution fund as provided under this section.
2. The insurance commissioner shall transfer an amount of up to fifty thousand dollars per biennium, as may be necessary, to the firefighters death benefit fund for distribution under chapter 18-05.1.
3. The insurance commissioner shall disburse funds to the North Dakota firefighter's association for uses authorized under chapter 18-03, ~~subject to legislative appropriations.~~
4. The insurance commissioner shall compute the amounts due to the certified city fire departments, certified rural fire departments, or certified fire protection districts entitled to benefits under this chapter on or before December first of each year. ~~The insurance commissioner shall allocate one-half of the biennial legislative appropriation for distribution under this subsection, to each eligible city not within a certified fire protection district, each certified rural fire protection district organized under this title, and each rural fire department certified by the state fire marshal, and pay the amount allocated in December of each year. The allocation must be made in proportion to the amount of insurance company premiums received by insurance companies pursuant to section 26.1-03-17 for policies for fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, commercial multiple peril, and crop hail insurance~~ the lines of insurance identified under section 18-04-04 on property within the city, certified rural fire protection district, or area served by the certified rural fire department to the total of those premiums for those policies in the state.
5. Annually, the insurance commissioner shall determine the amount of insurance premium taxes collected from the insurance lines identified in section 18-04-04 to the certified city fire departments, certified rural fire departments, and certified fire protection districts. Moneys authorized for

disbursement under this section are appropriated from the insurance tax distribution fund to the insurance commissioner on a continuing basis for the purpose of this section.

**SECTION 15. AMENDMENT.** Subsection 1 of section 18-13-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Agent" means any person authorized by the ~~attorney general~~insurance commissioner to purchase or sell packages of cigarettes.

**SECTION 16. AMENDMENT.** Subsection 4 of section 18-13-02 of the North Dakota Century Code is amended and reenacted as follows:

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~~insurance commissioner 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.

**SECTION 17. AMENDMENT.** Subsection 3 of section 18-13-03 of the North Dakota Century Code is amended and reenacted as follows:

3. The certifications must be made available to the ~~attorney general~~insurance commissioner for purposes consistent with this chapter and the state tax commissioner for the purposes of ensuring compliance with this section.

**SECTION 18. AMENDMENT.** Subsection 6 of section 18-13-04 of the North Dakota Century Code is amended and reenacted as follows:

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~~insurance commissioner, and their employees to inspect markings of cigarette packaging marked under this section.

**SECTION 19. AMENDMENT.** Subsection 6 of section 18-13-05 of the North Dakota Century Code is amended and reenacted as follows:

6. In addition to any other remedy provided by law, the state fire marshal or ~~attorney general~~insurance commissioner 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.

**SECTION 20. AMENDMENT.** Subsection 7 of section 18-13-05 of the North Dakota Century Code is amended and reenacted as follows:

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/insurance commissioner may obtain relief.

**SECTION 21. AMENDMENT.** Section 18-13-07 of the North Dakota Century Code is amended and reenacted as follows:

**18-13-07. Inspection. (Contingent expiration date - [See note](#))**

The attorney general/insurance commissioner 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/insurance commissioner and the state fire marshal the means, facilities, and opportunity for the examinations authorized by this section.

**SECTION 22.** A new subsection to section 26.1-01-03 of the North Dakota Century Code is created and enacted as follows:

Manage, control, and supervise the state fire marshal.

**SECTION 23.** A new subdivision to subsection 1 of section 26.1-01-07 of the North Dakota Century Code is created and enacted as follows:

For services provided by the state fire marshal.

**SECTION 24. AMENDMENT.** Subsection 1 of section 26.1-03-17 of the North Dakota Century Code is amended and reenacted as follows:

1. Before issuing the annual certificate required by law, the commissioner shall collect from every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except fraternal benefit and benevolent societies, doing business in this state, a tax on the gross amount of premiums, assessments, membership fees, subscriber fees, policy fees, service fees collected by any third-party administrator providing administrative services to a group that is self-insured for health care benefits, and finance and service charges received in this state during the preceding calendar year, at the rate of two percent with respect to life insurance, one and three-fourths percent with respect to accident and health insurance, and one and three-fourths percent with respect to all other lines of insurance. This tax does not apply to considerations for annuities. The total tax is payable on or before March first following the year for which the tax is assessable. If the due date falls on a Saturday or legal holiday, the tax is payable on the next succeeding business day. Collections from this tax must be deposited in the insurance tax distribution fund under section 18-04-04.1 but not in an amount exceeding one-half of the biennial amount appropriated for distribution under section 18-04-05 and chapter 23-46 in any fiscal year. Collections from this tax exceeding the sum

of the amount deposited in the insurance tax distribution fund must be deposited in the general fund in the state treasury.

Approved April 13, 2023

Filed April 14, 2023

# FOODS, DRUGS, OILS, AND COMPOUNDS

## CHAPTER 208

### SENATE BILL NO. 2378

(Senators Meyer, Klein)  
(Representatives Kasper, Lefor, Mock, Rohr)

AN ACT to create and enact a new section to chapter 19-02.1 of the North Dakota Century Code, relating to clinician-administered drugs.

#### 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:

#### Clinician-administered drugs.

1. As used in this section:

a. "Clinician-administered drug" means an outpatient prescription drug other than a:

(1) Vaccine that cannot be reasonably self-administered by the patient to whom the drug is prescribed;

(2) Vaccine that typically is administered:

(a) By a health care provider authorized under the laws of this state to administer the drug, including when acting under a physician's delegation and supervision; and

(b) In a physician's office, hospital outpatient infusion center, pharmacy, or other clinical setting; or

(3) Specialty drug.

b. "Pharmacy benefits manager" has the same meaning as in section 19-03.6-01.

c. "Specialty drug" has the same meaning as in section 19-02.1-16.2.

d. "Third-party payer" has the same meaning as in section 19-03.6-01.

2. A pharmacy benefits manager, third-party payer, or the agent of a pharmacy benefits manager or third-party payer may not:

- a. Require a patient, as a condition of payment or reimbursement, to purchase pharmacist services, including prescription drugs, exclusively through a mail-order pharmacy or a pharmacy benefits manager affiliate, or a combination of both.
- b. Increase patient costs if the patient chooses to not use a mail-order pharmacy or a pharmacy benefits manager affiliate, but instead uses another participating provider.
- c. Interfere with the patient's right to obtain a clinician-administered drug from the patient's provider of choice.
- d. Limit or exclude availability of a clinician-administered drug if not dispensed by a mail-order pharmacy or pharmacy benefits manager affiliate, if the drug would otherwise be covered for patients.
- e. Condition, deny, restrict, or refuse to authorize or approve, or reduce payment to a participating provider for a clinician-administered drug if all criteria for medical necessity are met, because the participating provider did not obtain clinician-administered drugs from a mail-order pharmacy or pharmacy benefits manager affiliate.
- f. By contract, written policy, or written procedure, require that a pharmacy designated by the pharmacy benefits manager or third-party payer dispense a medication directly to a patient with the expectation or intention that the patient will transport the medication to a health care setting for administration by a participating provider.
- g. By contract, written policy, or written procedure, require that a pharmacy designated by the pharmacy benefits manager or third-party payer dispense a medication directly to a health care setting for a participating provider to administer to a patient.
- h. Require the use of a home infusion pharmacy to dispense clinician-administered drugs to a patient in the home of the patient.

Approved April 4, 2023

Filed April 5, 2023

## CHAPTER 209

### SENATE BILL NO. 2248

(Senators Hogue, Larson, Luick)  
(Representatives Klemin, Louser)

AN ACT to create and enact a new section to chapter 19-03.1, and section 19-03.1-23.5 of the North Dakota Century Code, relating to a special penalty for death or injury through distribution of illegal drugs and fentanyl reporting; to provide a statement of legislative intent regarding fentanyl awareness expansion; and to provide a penalty.

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

<sup>111</sup> **SECTION 1.** A new section to chapter 19-03.1 of the North Dakota Century Code is created and enacted as follows:

##### **Distribution of illegal drugs - Special penalty for death or injury.**

1. As used in this section:
  - a. "Consume" means to inject, ingest, or inhale a controlled substance.
  - b. "Controlled substance" includes derivatives or analogs to a scheduled controlled substance.
  - c. "Injury" means an overdose that puts an individual's life at immediate risk.
  - d. "Supplies" includes delivering, supplying, directing, or willfully assisting another to supply or deliver a controlled substance.
2. An individual is guilty of causing death or injury by distributing a controlled substance if the individual willfully supplies another to deliver a controlled substance to an individual who consumes the controlled substance and that individual dies or is injured from overdosing after consuming a portion of the controlled substance.
  - a. A violation of this section is a class A felony.
  - b. This section does not limit a conviction under chapter 12.1-16, but an individual may not be found guilty of this section and an offense under chapter 12.1-16 if the conduct arises out of the same course of conduct.
3. Venue for an offense under this section is in the county where the death or injury occurred or any county where the controlled substance was directly or indirectly obtained by the deceased or injured individual.
  - a. An individual may not be convicted in more than one county for the death or injury of the same individual who overdosed on a controlled substance.

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<sup>111</sup> Section 19-03.1-22.6 was amended by section 29 of Senate Bill No. 2015, chapter 47.

- b. Notwithstanding chapter 29-03, an individual outside the state may be prosecuted within the state under this section.
  - c. The charging document for a violation of this section must list an overt act in which the individual engaged to violate this section.
  - d. Injury or death by an overdose may be proven by direct or circumstantial evidence.
4. An individual may not be charged under this section if the individual supplied or administered a controlled substance as part of a medical procedure or the individual was in a lawful position to dispense a medication prescription.
- a. An individual may not be charged under this section if the individual complied with section 19-3.1-23.4.
  - b. It is not a defense to this section that the deceased or injured individual had other controlled substances or alcohol in the individual's system which the defendant did not supply at the time of an overdose.

**SECTION 2.** Section 19-03.1-23.5 of the North Dakota Century Code is created and enacted as follows:

**19-03.1-23.5. Fentanyl reporting - Report to legislative management - Fentanyl awareness campaign.**

1. By November first of each year, the department of health and human services shall submit to the legislative management and the governor a written report summarizing the number of deaths that occurred in the state caused by or related to fentanyl consumption during the preceding calendar year, including the county in which the deaths occurred and the age and gender of the deceased individuals.
2. The department of health and human services shall make the data reported under subsection 1 available to the public by:
  - a. Making the information easily accessible on the department's government website;
  - b. Publishing easily comprehensible printed materials on fentanyl awareness, information, and resources;
  - c. Placing visible billboards in high-traffic areas to inform the public of the dangers of fentanyl; and
  - d. Developing a media and social media campaign to expand statewide awareness of fentanyl drug deaths and the fentanyl overdose epidemic occurring within the state.

**SECTION 3. DEPARTMENT OF HEALTH AND HUMAN SERVICES - FENTANYL AWARENESS EXPANSION.** Best practices relating to fentanyl drug overdose by the department of health and human services as provided in section 3 of House Bill No. 1447, as approved by the sixty-eighth legislative assembly, includes providing and expanding statewide awareness of fentanyl drug deaths and the fentanyl overdose epidemic, communication strategies and campaigns, access to

naloxone, and other strategies as provided under section 2 of this Act, for the biennium beginning July 1, 2023, and ending June 30, 2025.

Approved April 29, 2023

Filed May 1, 2023

## CHAPTER 210

### SENATE BILL NO. 2093

(Judiciary Committee)  
(At the request of the State Board of Pharmacy)

AN ACT to amend and reenact sections 19-03.1-05, 19-03.1-11, and 19-03.1-13 of the North Dakota Century Code, relating to the scheduling of controlled substances; and to declare an emergency.

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

<sup>112</sup> **SECTION 1. AMENDMENT.** Section 19-03.1-05 of the North Dakota Century Code is amended and reenacted as follows:

##### **19-03.1-05. Schedule I.**

1. The controlled substances listed in this section are included in schedule I.
2. Schedule I consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.
3. Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation:
  - a. Acetylmethadol.
  - b. Allylprodine.
  - c. Alphacetylmethadol.
  - d. Alphameprodine.
  - e. Alphamethadol.
  - f. Benzethidine.
  - g. Betacetylmethadol.
  - h. Betameprodine.
  - i. Betamethadol.
  - j. Betaprodine.
  - k. Brorphine.

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<sup>112</sup> Section 19-03.1-05 was also amended by section 14 of Senate Bill No. 2096, chapter 80.

- l. Clonitazene.
- m. Dextromoramide.
- n. Diampromide.
- o. Diethylthiambutene.
- p. Difenoxin.
- q. Dimenoxadol.
- r. Dimepheptanol.
- s. Dimethylthiambutene.
- t. Dioxaphetyl butyrate.
- u. Dipipanone.
- v. Ethylmethylthiambutene.
- w. Etonitazene.
- x. Etoxidine.
- y. Furethidine.
- z. Hydroxypethidine.
- aa. Isotonitazene (also known as N,N-diethyl-2-(2-(4- isopropoxybenzyl)-5-nitro-1H-benzimidazol-1-yl)ethan-1-amine).
- bb. Ketobemidone.
- cc. Levomoramide.
- dd. Levophenacymorphan.
- ee. Morpheridine.
  - ff. MPPP (also known as 1-methyl-4-phenyl-4-propionoxypiperidine).
- gg. Noracymethadol.
- hh. Norlevorphanol.
  - ii. Normethadone.
  - jj. Norpipanone.
- kk. PEPAP (1-(2-Phenylethyl)-4-Phenyl-4-acetoxypiperidine).
  - ll. Phenadoxone.
- mm. Phenampromide.

- nn. Phenomorphan.
- oo. Phenoperidine.
- pp. Piritramide.
- qq. Proheptazine.
- rr. Properidine.
- ss. Propiram.
- tt. Racemoramide.
- uu. Tilidine.
- vv. Trimeperidine.
- ww. 3,4-dichloro-*N*-[2-(dimethylamino)cyclohexyl]-*N*-methylbenzamide (also known as U-47700).
- xx. 1-cyclohexyl-4-(1,2-diphenylethyl)piperazine (also know as MT-45).
- yy. 3,4-dichloro-*N*-{[1-(dimethylamino)cyclohexyl]methyl}benzamide (also known as AH-7921).
- zz. Zipeprol.
- aaa. 2-(2-(4-butoxybenzyl)-5-nitro-1H-benzimidazol-1-yl)-*N,N*-diethylethan-1-amine (also known as Butonitazene).
- bbb. 2-(2-(4-ethoxybenzyl)-1H-benzimidazol-1-yl)-*N,N*-diethylethan-1-amine (also known as Etodesnitazene and etazene).
- ccc. *N,N*-diethyl-2-(2-(4-fluorobenzyl)-5-nitro-1H-benzimidazol-1-yl)ethan-1-amine (also known as Flunitazene).
- ddd. *N,N*-diethyl-2-(2-(4-methoxybenzyl)-1H-benzimidazol-1-yl)ethan-1-amine (also known as Metodesnitazene).
- eee. *N,N*-diethyl-2-(2-(4-methoxybenzyl)-5-nitro-1H-benzimidazol-1-yl)ethan-1-amine (also known as Metonitazene).
- fff. 2-(4-ethoxybenzyl)-5-nitro-1-(2-(pyrrolidin-1-yl)ethyl)-1H-benzimidazole (also known as *N*-Pyrrolidino Etonitazene and Etonitazepyne).
- ggg. *N,N*-diethyl-2-(5-nitro-2-(4-propoxybenzyl)-1H-benzimidazol-1-yl)ethan-1-amine (also known as Protonitazene).
- hhh. Fentanyl derivatives. Unless specifically excepted or unless listed in another schedule or are not FDA approved drugs, and are derived from *N*-(1-(2-Phenylethyl)-4-piperidiny)-*N*-phenylpropanamide (Fentanyl) by any substitution on or replacement of the phenethyl group, any substitution on the piperidine ring, any substitution on or replacement of the propanamide group, any substitution on the anilido phenyl group, or any combination of the above. Examples include:

- (1) N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide (also known as Acetyl-alpha-methylfentanyl).
- (2) N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl]propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido)piperidine (also known as Alpha-methylfentanyl).
- (3) N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide (also known as Alpha-methylthiofentanyl).
- (4) N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide (also known as Beta-hydroxyfentanyl).
- (5) N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide (also known as Beta-hydroxy-3-methylfentanyl).
- (6) N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide (also known as 3-Methylfentanyl).
- (7) N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide (also known as 3-Methylthiofentanyl).
- (8) N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]propanamide (also known as Para-fluorofentanyl).
- (9) N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]propanamide (also known as Thiofentanyl).
- (10) N-(1-phenylethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide (also known as Furanyl Fentanyl).
- (11) N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide; N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide (also known as Butyryl Fentanyl).
- (12) N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropionamide; N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-N-phenylpropanamide (also known as Beta-Hydroxythiofentanyl).
- (13) N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide (also known as Acetyl Fentanyl).
- (14) N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide (also known as Acryl Fentanyl).
- (15) N-(1-phenethylpiperidin-4-yl)-N-phenylpentanamide (also known as Valeryl Fentanyl).
- (16) N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide (also known as 4-Fluoroisobutyryl Fentanyl).
- (17) N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide (also known as Ortho-fluorofentanyl, 2-Fluorofentanyl).
- (18) N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide (also known as Tetrahydrofuranyl Fentanyl).

- (19) 2-methoxy-N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide (also known as Methoxyacetyl Fentanyl).
- (20) N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopropanecarboxamide (also known as Cyclopropyl Fentanyl).
- (21) N-(2-fluorophenyl)-2-methoxy-N-(1-phenethylpiperidin-4-yl)acetamide (also known as Ocfentanil).
- (22) N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopentanecarboxamide (also known as Cyclopentyl Fentanyl).
- (23) N-(1-phenethylpiperidin-4-yl)-N-phenylisobutyramide (also known as Isobutyryl Fentanyl).
- (24) N-(4-chlorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide (also known as Para-chloroisobutyryl Fentanyl).
- (25) N-(4-methoxyphenyl)-N-(1-phenethylpiperidin-4-yl)butyramide (also known as Para-methoxybutyryl Fentanyl).
- (26) N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)butyramide (also known as Para-fluorobutyryl Fentanyl).
- (27) N-(1-(2-fluorophenethyl)piperidin-4-yl)-N-(2-fluorophenyl)propionamide (also known as 2'-fluoro Ortho-fluorofentanyl; 2'-fluoro 2-fluorofentanyl).
- (28) N-(2-methylphenyl)-N-(1-phenethylpiperidin-4-yl)acetamide (also known as Ortho-methyl Acetylfentanyl; 2-methyl acetylfentanyl).
- (29) N-(1-phenethylpiperidin-4-yl)-N,3-diphenylpropanamide (also known as Beta'-phenyl Fentanyl; 3-phenylpropanoyl fentanyl and Hydrocinnamoyl Fentanyl).
- (30) N-(1-phenethylpiperidin-4-yl)-N-phenylthiophene-2-carboxamide (also known as Thiofuranyl Fentanyl; 2-thiofuranyl fentanyl; thiophene fentanyl).
- (31) (E)-N-(1-phenethylpiperidin-4-yl)-N-phenylbut-2-enamide (also known as Crotonyl Fentanyl).
- (32) N-(1-(4-methylphenethyl)piperidin-4-yl)-N-phenylacetamide (4'-methyl acetyl fentanyl).
- (33) N-phenyl-N-(1-(2-phenylpropyl)piperidin-4-yl)propionamide (beta-methyl fentanyl).
- (34) N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)butyramide (ortho-fluorobutyryl fentanyl; 2-fluorobutyryl fentanyl).
- (35) 2-methoxy-N-(2-methylphenyl)-N-(1-phenethylpiperidin-4-yl)acetamide (ortho-methyl methoxyacetylfentanyl; 2-methyl methoxyacetyl fentanyl).

- (36) N-(4-methylphenyl)-N-(1-phenethylpiperidin-4-yl)propionamide (para-methylfentanyl; 4-methylfentanyl).
- (37) N-(1-phenethylpiperidin-4-yl)-N-phenylbenzamide (phenyl fentanyl; benzoyl fentanyl).
- (38) Ethyl (1-phenethylpiperidin-4-yl)(phenyl)carbamate (fentanyl carbamate).
- (39) N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)acrylamide (ortho-fluoroacryl fentanyl).
- (40) N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide (ortho-fluoroisobutyryl fentanyl).
- (41) N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)furan-2-carboxamide (para-fluoro furanyl fentanyl).
4. Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
- Acetorphine.
  - Acetyldihydrocodeine.
  - Benzylmorphine.
  - Codeine methylbromide.
  - Codeine-N-Oxide.
  - Cyprenorphine.
  - Desomorphine.
  - Dihydromorphine.
  - Drotebanol.
  - Etorphine (except hydrochloride salt).
  - Heroin.
  - Hydromorphinol.
  - Methyldesorphine.
  - Methyldihydromorphine.
  - Morphine methylbromide.
  - Morphine methylsulfonate.
  - Morphine-N-Oxide.

- r. Myrophine.
  - s. Nicocodeine.
  - t. Nicomorphine.
  - u. Normorphine.
  - v. Pholcodine.
  - w. Thebacon.
5. Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following hallucinogenic 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 (for purposes of this subsection only, the term "isomer" includes the optical, position, and geometric isomers):
- a. Alpha-ethyltryptamine, its optical isomers, salts, and salts of isomers (also known as etryptamine;  $\alpha$ -ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole).
  - b. Alpha-methyltryptamine.
  - c. 4-methoxyamphetamine (also known as 4-methoxy- $\alpha$ -methylphenethylamine; paramethoxyamphetamine; PMA).
  - d. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenylamine, and N-hydroxy MDA).
  - e. Ibogaine (also known as 7-Ethyl-6, 6B, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5 H-pyrido [1', 2':1,2] azepero (5,4-b) indole; Tabernanthe iboga).
  - f. Lysergic acid diethylamide.
  - g. Marijuana.
  - h. Parahexyl (also known as 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro- 6,6,9-trimethyl-6H-dibenzol[b,d]pyran; Synhexyl).
  - i. Peyote (all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds, or its extracts).
  - j. N-ethyl-3-piperidyl benzilate.
  - k. N-methyl-3-piperidyl benzilate.
  - l. Psilocybin.

m. (1) Tetrahydrocannabinols, meaning tetrahydrocannabinols naturally contained in a plant of the genus *Cannabis* (*cannabis* plant), as well as synthetic equivalents of the substances contained in the *cannabis* plant, or in the resinous extractives of such plant, including synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant; such as the following:

(a) Delta-1 *cis* or *trans* tetrahydrocannabinol, and their optical isomers.  
Other names: Delta-9-tetrahydrocannabinol.

(b) Delta-6 *cis* or *trans* tetrahydrocannabinol, and their optical isomers.  
Other names: Delta-8-tetrahydrocannabinol.

(c) Delta-3,4 *cis* or *trans* tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

(2) Tetrahydrocannabinols do not include:

(a) The allowable amount of total tetrahydrocannabinol found in hemp as defined in chapter 4.1-18.1; or

(b) A prescription drug approved by the United States food and drug administration under section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355].

n. Cannabinoids, synthetic. It includes the chemicals and chemical groups listed below, including their homologues, salts, isomers, and salts of isomers. The term "isomer" includes the optical, position, and geometric isomers.

(1) Indole acetamides. Any compound structurally derived from 1H-indole3-acetamide or 1H-2-acetamide substituted in both of the following ways: at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, tetrahydropyranylmethyl, benzyl, or halo benzyl group; and, at the hydrogen of the acetamide by a phenyl, benzyl, cumyl, naphthyl, adamantyl, cyclopropyl, pyrrolidinyl, piperazinyl, or propionaldehyde group whether or not the compound is further modified to any extent in the following ways:

(a) Substitution to the indole ring to any extent; or

(b) Substitution to the phenyl, benzyl, cumyl, naphthyl, adamantyl, cyclopropyl, pyrrolidinyl, piperazinyl, or propionaldehyde group to any extent; or

(c) A nitrogen heterocyclic analog of the indole ring; or

(d) A nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring.

(e) Examples include:

[1] N-cyclohexyl-2-(1-pentylindol-3-yl)acetamide - Other names: CH-PIATA, Cyclohexyl-PIATA, CHX-PIATA, CH-PIACA, and CHX-PIACA.

[2] N-cyclohexyl-2-[1-[(4-fluorophenyl)methyl]indol-3-yl]acetamide - Other names: CH-FUBIATA and CH-FUBIACA.

[3] 2-[[2-[1-[(4-fluorophenyl)methyl]indol-3-yl]acetyl]amino]-3,3-dimethyl-butanamide - Other names: ADB-FUBIATA, FUB-ACADB, and AD-18.

(2) Indole carboxaldehydes. Any compound structurally derived from 1H-indole-3-carboxaldehyde or 1H-2-carboxaldehyde substituted in both of the following ways: at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, tetrahydropyranylmethyl, benzyl, or halo benzyl group; and, at the hydrogen of the carboxaldehyde by a phenyl, benzyl, cumyl, naphthyl, adamantyl, cyclopropyl, pyrrolidinyl, piperazinyl, or propionaldehyde group whether or not the compound is further modified to any extent in the following ways:

(a) Substitution to the indole ring to any extent; or

(b) Substitution to the phenyl, benzyl, cumyl, naphthyl, adamantyl, cyclopropyl, pyrrolidinyl, piperazinyl, or propionaldehyde group to any extent; or

(c) A nitrogen heterocyclic analog of the indole ring; or

(d) A nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring.

(e) Examples include:

[1] 1-Pentyl-3-(1-naphthoyl)indole - Other names: JWH-018 and AM-678.

[2] 1-Butyl-3-(1-naphthoyl)indole - Other names: JWH-073.

[3] 1-Pentyl-3-(4-methoxy-1-naphthoyl)indole - Other names: JWH-081.

[4] 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole - Other names: JWH-200.

[5] 1-Propyl-2-methyl-3-(1-naphthoyl)indole - Other names: JWH-015.

- [6] 1-Hexyl-3-(1-naphthoyl)indole - Other names: JWH-019.
- [7] 1-Pentyl-3-(4-methyl-1-naphthoyl)indole - Other names: JWH-122.
- [8] 1-Pentyl-3-(4-ethyl-1-naphthoyl)indole - Other names: JWH-210.
- [9] 1-Pentyl-3-(4-chloro-1-naphthoyl)indole - Other names: JWH-398.
- [10] 1-(5-fluoropentyl)-3-(1-naphthoyl)indole - Other names: AM-2201.
- [11] 1-(2-cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole - Other names: RCS-8.
- [12] 1-Pentyl-3-(2-methoxyphenylacetyl)indole - Other names: JWH-250.
- [13] 1-Pentyl-3-(2-methylphenylacetyl)indole - Other names: JWH-251.
- [14] 1-Pentyl-3-(2-chlorophenylacetyl)indole - Other names: JWH-203.
- [15] 1-Pentyl-3-(4-methoxybenzoyl)indole - Other names: RCS-4.
- [16] (1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole) - Other names: AM-694.
- [17] (4-Methoxyphenyl)-[2-methyl-1-(2-(4-morpholinyl)ethyl)indol-3-yl]methanone - Other names: WIN 48,098 and Pravadoline.
- [18] (1-Pentylindol-3-yl)-(2,2,3,3-tetramethylcyclopropyl)methanone -- Other names: UR-144.
- [19] (1-(5-fluoropentyl)indol-3-yl)-(2,2,3,3-tetramethylcyclopropyl)methanone - Other names: XLR-11.
- [20] (1-(2-morpholin-4-ylethyl)-1H-indol-3-yl)-(2,2,3,3-tetramethylcyclopropyl)methanone - Other names: A-796,260.
- [21] (1-(5-fluoropentyl)-1H-indazol-3-yl)(naphthalen-1-yl)methanone -- Other names: THJ-2201.
- [22] 1-naphthalenyl(1-pentyl-1H-indazol-3-yl)-methanone -- Other names: THJ-018.
- [23] (1-(5-fluoropentyl)-1H-benzo[d]imidazol-2-yl)(naphthalen-1-yl)methanone - Other names: FUBIMINA.
- [24] 1-[(N-methylpiperidin-2-yl)methyl]-3-(adamant-1-oyl) indole - Other names: AM-1248.

[25] 1-Pentyl-3-(1-adamantoyl)indole - Other names: AB-001 and JWH-018 adamantyl analog.

(2)(3)Indole carboxamides. Any compound structurally derived from 1H-indole-3-carboxamide or 1H-2-carboxamide substituted in both of the following ways: at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, tetrahydropyranylmethyl, benzyl, or halo benzyl group; and, at the nitrogen of the carboxamide by a phenyl, benzyl, cumyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group whether or not the compound is further modified to any extent in the following ways:

- (a) Substitution to the indole ring to any extent; or
- (b) Substitution to the phenyl, benzyl, cumyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group to any extent; or
- (c) A nitrogen heterocyclic analog of the indole ring; or
- (d) A nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring.
- (e) Examples include:

- [1] N-Adamantyl-1-pentyl-1H-indole-3-carboxamide - Other names: JWH-018 adamantyl carboxamide, APICA, SDB-001, and 2NE1.
- [2] N-Adamantyl-1-fluoropentylindole-3-carboxamide - Other names: STS-135.
- [3] N-Adamantyl-1-pentyl-1H-Indazole-3-carboxamide - Other names: AKB 48 and APINACA.
- [4] N-1-naphthalenyl-1-pentyl-1H-indole-3-carboxamide - Other names: NNE1 and MN-24.
- [5] N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indole-3-carboxamide - Other names: ADBICA.
- [6] (S)-N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide - Other names: AB-PINACA.
- [7] N-[(1S)-1-(aminocarbonyl)-2-methylpropyl]-1-[(4-fluorophenyl)methyl]-1H-indazole-3-carboxamide - Other names: AB-FUBINACA.
- [8] N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide - Other names: 5-Fluoro AB-PINACA and 5F-AB-PINACA.
- [9] N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide - Other names: ADB-PINACA.

- [10] N-[(1S)-1-(aminocarbonyl)-2-methylpropyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide - Other names: AB-CHMINACA.
- [11] N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide - Other names: ADB-FUBINACA.
- [12] N-(adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide - Other names: FUB-AKB48, FUB-APINACA, and AKB48 N-(4-FLUOROBENZYL).
- [13] 1-(5-fluoropentyl)-N-(quinolin-8-yl)-1H-indazole-3-carboxamide - Other names: 5-fluoro-THJ.
- [14] methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate - Other names: 5-fluoro AMB and 5F-AMB.
- [15] methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3-methylbutanoate - Other names: FUB-AMB, MMB-FUBINACA, and AMB-FUBINACA.
- [16] N-[1-(aminocarbonyl)-2,2-dimethylpropyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide - Other names: MAB-CHMINACA and ADB-CHMINACA.
- [17] Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate - Other names: 5F-ADB and 5F-MDMB-PINACA.
- [18] N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide - Other names: 5F-APINACA and 5F-AKB48.
- [19] Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate - Other names: MDMB-CHMICA and MMB-CHMINACA.
- [20] Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate - Other names: MDMB-FUBINACA.
- [21] 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide - Other names: 4-CN-CUMYL-BUTINACA; 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYL BINACA; CUMYL-4CN-BINACA; SGT-78.
- [22] methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate - Other names: MMB-CHMICA, AMB-CHMICA.
- [23] 1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3-carboxamide - Other names: 5F-CUMYL-P7A1CA.
- [24] ethyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate - Other names: 5F-EDMB-PINACA.

- [25] methyl 2-(1-(5-fluoropentyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate - Other names: 5F-MDMB-PICA and 5F-MDMB-2201.
- [26] 1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide - Other names: 5F-CUMYL-PINACA, SGT-25.
- [27] (1-(4-fluorobenzyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl) methanone - Other names: FUB-144.
- [28] methyl 2-(1-(4-fluorobutyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate (4F-MDMB-BINACA, 4F-MDMB-BUTINACA).
- [29] Methyl 3,3-dimethyl-2-[(1-pent-4-enyl)indazole-3-carbonyl]amino]butanoate - Other names: MDMB-4en-PINACA, MDMB-PENINACA, and 5-CL-ADB-A.
- [30] Methyl 2-[[1-(5-fluoropentyl)indole-3-carbonyl]amino]-3,3-dimethyl-butanoate - Other names: 5F-MDMB-PICA and 5F-MDMB-2201.
- [31] 1-butyl-N-(1-carbamoyl-2,2-dimethyl-propyl)indazole-3-carboxamide - Other names: ADB-BINACA and ADB-BUTINACA.
- [32] 5-bromo-N-(1-carbamoyl-2,2-dimethyl-propyl)-1H-indazole-3-carboxamide - Other names: ADB-5Br-INACA.
- [33] Methyl 2-[(5-bromo-1H-indazole-3-carbonyl)amino]-3,3-dimethyl- butanoate - Other names: MDMB-5Br-INACA.
- [34] 5-bromo-1-butyl-N-(1-carbamoyl-2,2-dimethyl-propyl)indazole-3- carboxamide - Other names: ADB-5'Br-BINACA and ADB-5'Br-BUTINACA.

(3)(4)Indole carboxylic acids. Any compound structurally derived from 1H-indole-3-carboxylic acid or 1H-2-carboxylic acid substituted in both of the following ways: at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, tetrahydropyranylmethyl, benzyl, or halo benzyl group; and, at the hydroxyl group of the carboxylic acid by a phenyl, benzyl, cumyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group whether or not the compound is further modified to any extent in the following ways:

- (a) Substitution to the indole ring to any extent; or
- (b) Substitution to the phenyl, benzyl, cumyl, naphthyl, adamantyl, cyclopropyl, propionaldehyde group to any extent; or
- (c) A nitrogen heterocyclic analog of the indole ring; or

(d) A nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring.

(e) Examples include:

[1] 1-(cyclohexylmethyl)-1H-indole-3-carboxylic acid 8-quinolinyl ester - Other names: BB-22 and QUCHIC.

[2] naphthalen-1-yl 1-(4-fluorobenzyl)-1H-indole-3-carboxylate - Other names: FDU-PB-22.

[3] 1-pentyl-1H-indole-3-carboxylic acid 8-quinolinyl ester - Other names: PB-22 and QUPIC.

[4] 1-(5-Fluoropentyl)-1H-indole-3-carboxylic acid 8-quinolinyl ester - Other names: 5-Fluoro PB-22 and 5F-PB-22.

[5] quinolin-8-yl-1-(4-fluorobenzyl)-1H-indole-3-carboxylate - Other names: FUB-PB-22.

[6] naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate - Other names: NM2201 and CBL2201.

~~(4)~~(5)Naphthylmethylindoles. Any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples include:

(a) 1-Pentyl-1H-indol-3-yl-(1-naphthyl)methane - Other names: JWH-175.

(b) 1-Pentyl-1H-indol-3-yl-(4-methyl-1-naphthyl)methane - Other names: JWH-184.

~~(5)~~(6)Naphthoypyrroles. Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent. Examples include: (5-(2-fluorophenyl)-1-pentylpyrrol-3-yl)-naphthalen-1-ylmethanone - Other names: JWH-307.

~~(6)~~(7)Naphthylmethylindenes. Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the indene ring to any extent, whether or not

substituted in the naphthyl ring to any extent. Examples include: E-1-[1-(1-Naphthalenylmethylene)-1H-inden-3-yl]pentane - Other names: JWH-176.

~~(7)~~(8)Cyclohexylphenols. Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not substituted in the cyclohexyl ring to any extent. Examples include:

- (a) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol - Other names: CP 47,497.
- (b) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol - Other names: Cannabicyclohexanol and CP 47,497 C8 homologue.
- (c) 5-(1,1-dimethylheptyl)-2-[(1R,2R)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl]-phenol - Other names: CP 55,940.

~~(8)~~(9)Others specifically named:

- (a) (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol - Other names: HU-210.
- (b) (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol - Other names: Dexanabinol and HU-211.
- (c) 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone - Other names: WIN 55,212-2.
- (d) Naphthalen-1-yl-(4-pentyloxynaphthalen-1-yl)methanone - Other names: CB-13.
- (e) N-[(Z)-(1-hexyl-2-oxo-indolin-3-ylidene)amino]benzamide - Other names: BZO-HEXOXIZID and MDA-19.
- (f) N-[(Z)-(2-oxo-1-pentyl-indolin-3-ylidene)amino]benzamide - Other names: BZO-POXIZID, Pentyl MDA-19, and 5C-MDA-19.
- (g) N-[(Z)-[1-(5-fluoropentyl)-2-oxo-indolin-3-ylidene]amino]benzamide - Other names: 5F-BZO-POXIZID and 5F-MDA-19.
- (h) N-[(Z)-(2-oxo-1-pent-4-enyl-indolin-3-ylidene)amino]benzamide - Other names: BZO-4en-POXIZID and 4en-pentyl MDA-19.
- (i) N-[(Z)-[1-(cyclohexylmethyl)-2-oxo-indolin-3-ylidene]amino]benzamide - Other names: BZO-CHMOXIZID, Cyclohexylmethyl MDA-19 and CHM-MDA-19.

- (j) N-(1-carbamoyl-2-methyl-propyl)-2-(5-fluoropentyl)-5-(4-fluorophenyl)pyrazole-3-carboxamide - Other Names: 5F-AB-PFUPPYCA.
- o. Substituted phenethylamines. This includes any compound, unless specifically excepted, specifically named in this schedule, or listed under a different schedule, structurally derived from phenylethan-2-amine by substitution on the phenyl ring in any of the following ways, that is to say, by substitution with a fused methylenedioxy ring, fused furan ring, or fused tetrahydrofuran ring; by substitution with two alkoxy groups; by substitution with one alkoxy and either one fused furan, tetrahydrofuran, or tetrahydropyran ring system; or by substitution with two fused ring systems from any combination of the furan, tetrahydrofuran, or tetrahydropyran ring systems.
- (1) Whether or not the compound is further modified in any of the following ways, that is to say:
- (a) By substitution of phenyl ring by any halo, hydroxyl, alkyl, trifluoromethyl, alkoxy, or alkylthio groups;
  - (b) By substitution at the 2-position by any alkyl groups; or
  - (c) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, hydroxybenzyl, methylenedioxybenzyl, or methoxybenzyl groups.
- (2) Examples include:
- (a) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (also known as 2C-C or 2,5-Dimethoxy-4-chlorophenethylamine).
  - (b) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (also known as 2C-D or 2,5-Dimethoxy-4-methylphenethylamine).
  - (c) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (also known as 2C-E or 2,5-Dimethoxy-4-ethylphenethylamine).
  - (d) 2-(2,5-Dimethoxyphenyl)ethanamine (also known as 2C-H or 2,5-Dimethoxyphenethylamine).
  - (e) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (also known as 2C-I or 2,5-Dimethoxy-4-iodophenethylamine).
  - (f) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (also known as 2C-N or 2,5-Dimethoxy-4-nitrophenethylamine).
  - (g) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (also known as 2C-P or 2,5-Dimethoxy-4-propylphenethylamine).
  - (h) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (also known as 2C-T-2 or 2,5-Dimethoxy-4-ethylthiophenethylamine).
  - (i) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (also known as 2C-T-4 or 2,5-Dimethoxy-4-isopropylthiophenethylamine).

- (j) 2-(4-bromo-2,5-dimethoxyphenyl)ethanamine (also known as 2C-B or 2,5-Dimethoxy-4-bromophenethylamine).
- (k) 2-(2,5-dimethoxy-4-(methylthio)phenyl)ethanamine (also known as 2C-T or 4-methylthio-2,5-dimethoxyphenethylamine).
- (l) 1-(2,5-dimethoxy-4-iodophenyl)propan-2-amine (also known as DOI or 2,5-Dimethoxy-4-iodoamphetamine).
- (m) 1-(4-Bromo-2,5-dimethoxyphenyl)-2-aminopropane (also known as DOB or 2,5-Dimethoxy-4-bromoamphetamine).
- (n) 1-(4-chloro-2,5-dimethoxy-phenyl)propan-2-amine (also known as DOC or 2,5-Dimethoxy-4-chloroamphetamine).
- (o) 2-(4-bromo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (also known as 2C-B-NBOMe; 2,5B-NBOMe or 2,5-Dimethoxy-4-bromo-N-(2-methoxybenzyl)phenethylamine).
- (p) 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (also known as 2C-I-NBOMe; 2,5I-NBOMe or 2,5-Dimethoxy-4-iodo-N-(2-methoxybenzyl)phenethylamine).
- (q) N-(2-Methoxybenzyl)-2-(3,4,5-trimethoxyphenyl)ethanamine (also known as mescaline-NBOMe or 3,4,5-trimethoxy-N-(2-methoxybenzyl)phenethylamine).
- (r) 2-(4-chloro-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (also known as 2C-C-NBOMe; 2,5C-NBOMe or 2,5-Dimethoxy-4-chloro-N-(2-methoxybenzyl)phenethylamine).
- (s) 2-(7-Bromo-5-methoxy-2,3-dihydro-1-benzofuran-4-yl)ethanamine (also known as 2CB-5-hemiFLY).
- (t) 2-(8-bromo-2,3,6,7-tetrahydrofuro [2,3-f][1]benzofuran-4-yl)ethanamine (also known as 2C-B-FLY).
- (u) 2-(10-Bromo-2,3,4,7,8,9-hexahydropyrano[2,3-g]chromen-5-yl)ethanamine (also known as 2C-B-butterFLY).
- (v) N-(2-Methoxybenzyl)-1-(8-bromo-2,3,6,7-tetrahydrobenzo[1,2-b:4,5-b']difuran-4-yl)-2-aminoethane (also known as 2C-B-FLY-NBOMe).
- (w) 1-(4-Bromofuro[2,3-f][1]benzofuran-8-yl)propan-2-amine (also known as bromo-benzodifuran-yl-isopropylamine or bromo-dragonFLY).
- (x) N-(2-Hydroxybenzyl)-4-iodo-2,5-dimethoxyphenethylamine (also known as 2C-I-NBOH or 2,5I-NBOH).
- (y) 5-(2-Aminopropyl)benzofuran (also known as 5-APB).

- (z) 6-(2-Aminopropyl)benzofuran (also known as 6-APB).
  - (aa) 5-(2-Aminopropyl)-2,3-dihydrobenzofuran (also known as 5-APDB).
  - (bb) 6-(2-Aminopropyl)-2,3,-dihydrobenzofuran (also known as 6-APDB).
  - (cc) 2,5-dimethoxy-amphetamine (also known as 2,5-dimethoxy- $\alpha$ -methylphenethylamine; 2,5-DMA).
  - (dd) 2,5-dimethoxy-4-ethylamphetamine (also known as DOET).
  - (ee) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (also known as 2C-T-7).
  - (ff) 5-methoxy-3,4-methylenedioxy-amphetamine.
  - (gg) 4-methyl-2,5-dimethoxy-amphetamine (also known as 4-methyl-2,5-dimethoxy- $\alpha$ -methylphenethylamine; DOM and STP).
  - (hh) 3,4-methylenedioxy amphetamine (also known as MDA).
  - (ii) 3,4-methylenedioxymethamphetamine (also known as MDMA).
  - (jj) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl- $\alpha$ -methyl-3,4(methylenedioxy)phenethylamine, MDE, MDEA).
  - (kk) 3,4,5-trimethoxy amphetamine.
  - (ll) Mescaline (also known as 3,4,5-trimethoxyphenethylamine).
- p. Substituted tryptamines. This includes any compound, unless specifically excepted, specifically named in this schedule, or listed under a different schedule, structurally derived from 2-(1H-indol-3-yl)ethanamine (i.e., tryptamine) by mono- or di-substitution of the amine nitrogen with alkyl or alkenyl groups or by inclusion of the amino nitrogen atom in a cyclic structure whether or not the compound is further substituted at the  $\alpha$ -position with an alkyl group or whether or not further substituted on the indole ring to any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy groups. Examples include:
- (1) 5-methoxy-N,N-diallyltryptamine (also known as 5-MeO-DALT).
  - (2) 4-acetoxy-N,N-dimethyltryptamine (also known as 4-AcO-DMT or O-Acetylpsilocin).
  - (3) 4-hydroxy-N-methyl-N-ethyltryptamine (also known as 4-HO-MET).
  - (4) 4-hydroxy-N,N-diisopropyltryptamine (also known as 4-HO-DIPT).
  - (5) 5-methoxy-N-methyl-N-isopropyltryptamine (also known as 5-MeO-MIPT).
  - (6) 5-methoxy-N,N-dimethyltryptamine (also known as 5-MeO-DMT).

- (7) Bufotenine (also known as 3-(Beta-Dimethyl-aminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine).
  - (8) 5-methoxy-N,N-diisopropyltryptamine (also known as 5-MeO-DIPT).
  - (9) Diethyltryptamine (also known as N,N-Diethyltryptamine; DET).
  - (10) Dimethyltryptamine (also known as DMT).
  - (11) Psilocyn.
- q. 1-[3-(trifluoromethylphenyl)]piperazine (also known as TFMPP).
  - r. 1-[4-(trifluoromethylphenyl)]piperazine.
  - s. 6,7-dihydro-5H-indeno-(5,6-d)-1,3-dioxol-6-amine (also known as 5,6-Methylenedioxy-2-aminoindane or MDAI).
  - t. 2-(Ethylamino)-2-(3-methoxyphenyl)cyclohexanone (also known as Methoxetamine or MXE).
  - u. Ethylamine analog of phencyclidine (also known as N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE).
  - v. Pyrrolidine analog of phencyclidine (also known as 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP).
  - w. Thiophene analog of phencyclidine (also known as (1-[1-(2-thienyl)cyclohexyl] piperidine; 2-Thienylanalogue of phencyclidine; TPCP, TCP).
  - x. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (also known as TCPy).
  - y. *Salvia divinorum*, salvinorin A, or any of the active ingredients of *salvia divinorum*.
6. Depressants. 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 depressant effect on the central nervous system, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
- a. Gamma-hydroxybutyric acid.
  - b. Mecloqualone.
  - c. Methaqualone.
  - d. Clonazepam (also known as Clonitrazepam).
  - e. Etizolam.
  - f. Flualprazolam.
  - g. Flubromazepam.

- h. Flubromazolam.
  - i. Adinazolam.
  - j. Bromazolam.
  - k. Deschloroetizolam.
  - l. Diclazepam.
7. 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, including its salts, isomers, and salts of isomers:
- a. Aminorex (also known as 2-amino-5-phenyl-2-oxazoline, or 4,5-dihydro-5-phenyl-2-oxazolamine).
  - b. Cathinone.
  - c. Substituted cathinones. Any compound, material, mixture, preparation, or other product, unless listed in another schedule or an approved food and drug administration drug (e.g., bupropion, pyrovalerone), structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways:
    - (1) By substitution in the ring system to any extent with alkyl, alkylendioxy, alkoxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents;
    - (2) By substitution at the 3-position with an acyclic alkyl substituent;
    - (3) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups; or
    - (4) By inclusion of the 2-amino nitrogen atom in a cyclic structure.

Some trade or other names:

- (a) 3,4-Methylenedioxy- $\alpha$ -pyrrolidinopropiophenone (also known as MDPPP).
- (b) 3,4-Methylenedioxy-N-ethylcathinone (also known as Ethylone, MDEC, or bk-MDEA).
- (c) 3,4-Methylenedioxy-N-methylcathinone (also known as Methylone or bk-MDMA).
- (d) 3,4-Methylenedioxypyrovalerone (also known as MDPV).
- (e) 3,4-Dimethylmethcathinone (also known as 3,4-DMMC).
- (f) 2-(methylamino)-1-phenylpentan-1-one (also known as Pentedrone).

- (g) 2-Fluoromethcathinone (also known as 2-FMC).
- (h) 3-Fluoromethcathinone (also known as 3-FMC).
- (i) 4-Methylethcathinone (also known as 4-MEC and 4-methyl-N-ethylcathinone).
- (j) 4-Fluoromethcathinone (also known as Flephedrone and 4-FMC).
- (k) 4-Methoxy-alpha-pyrrolidinopropiophenone (also known as MOPPP).
- (l) 4-Methoxymethcathinone (also known as Methedrone; bk-PMMA).
- (m) 4'-Methyl-alpha-pyrrolidinobutiophenone (also known as MPBP).
- (n) Alpha-methylamino-butyrophenone (also known as Buphedrone or MABP).
- (o) Alpha-pyrrolidinobutiophenone (also known as alpha-PBP).
- (p) Alpha-pyrrolidinopropiophenone (also known as alpha-PPP).
- (q) Alpha-pyrrolidinopentiophenone (also known as Alpha-pyrrolidinovalerophenone or alpha-PVP).
- (r) Beta-keto-N-methylbenzodioxolylbutanamine (also known as Butylone or bk-MBDB).
- (s) Ethcathinone (also known as N-Ethylcathinone).
- (t) 4-Methylmethcathinone (also known as Mephedrone or 4-MMC).
- (u) Methcathinone.
- (v) N,N-dimethylcathinone (also known as metamfepramone).
- (w) Naphthylpyrovalerone (naphyrone).
- (x) B-Keto-Methylbenzodioxolylpentanamine (also known as Pentylone).
- (y) 4-Methyl-alpha-pyrrolidinopropiophenone (also known as 4-MePPP and MPPP).
- (z) 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-pentan-1-one (also known as Ephylone and N-Ethylpentylone).
- (aa) N-ethylhexedrone (also known as alpha - ethylaminohexanophenone and 2-(ethylamino)-1-phenylhexan-1-one).
- (bb) Alpha-pyrrolidinohexanophenone (also known as alpha-PHP, alpha-pyrrolidinohexiophenone, and 1-phenyl-2-(pyrrolidin-1-yl)hexan-1-one).

- (cc) 4-methyl-alpha-ethylaminopentiophenone (also known as 4-MEAP and 2-(ethylamino)-1-(4-methylphenyl)pentan-1-one).
  - (dd) 4'-methyl-alpha-pyrrolidinohexiophenone (also known as MPHP, 4'-methyl-alpha-pyrrolidinohexanophenone and 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)hexan-1-one).
  - (ee) Alpha-pyrrolidinoheptaphenone (also known as PV8 and 1-phenyl-2-(pyrrolidin-1-yl)heptan-1-one).
  - (ff) 4-chloro-alpha-pyrrolidinovalerophenone (also known 4-chloro-alpha-PVP, 4'-chloro-alpha-pyrrolidinopentiophenone, and 1-(4-chlorophenyl)-2-(pyrrolidin-1-yl)pentan-1-one).
- d. Fenethylline.
  - e. Fluoroamphetamine.
  - f. Fluoromethamphetamine.
  - g. ( $\pm$ )cis-4-methylaminorex (also known as ( $\pm$ )cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine).
  - h. N-Benzylpiperazine (also known as BZP, 1-benzylpiperazine).
  - i. N-ethylamphetamine.
  - j. N, N-dimethylamphetamine (also known as N,N-alpha-trimethylbenzeneethanamine; N,N-alpha-trimethylphenethylamine).
  - k. 1-(4-methoxyphenyl)-N-methylpropan-2-amine (also known as paramethoxymethamphetamine and PMMA).
  - l. 4,4'-Dimethylaminorex (4,4'-DMAR; 4,5-dihydro-4-methyl-5-(4-methylphenyl)-2-oxazolamine; 4-methyl-5-(4-methylphenyl)-4,5-dihydro-1,3-oxazol-2-amine).
  - m. Amineptine (Also known as 7- [(10,11-dihydro-5Hdibenzo[a,d]cyclohepten-5- yl)amino]heptanoic acid).
  - n. Mesocarb (Also known as N-phenyl-N' -(3-(1- phenylpropan-2-yl)-1,2,3-oxadiazol-3- ium-5-yl)carbamimidate).
  - o. Methiopropamine (Also known as N-methyl-1-(thiophen-2-yl)propan-2-amine).

**SECTION 2. AMENDMENT.** Section 19-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.1-11. Schedule IV.**

1. The controlled substances listed in this section are included in schedule IV.
2. Schedule IV consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

3. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:
  - a. Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
  - b. Dextropropoxyphene (also known as alpha-(+)-4-dimethylamino- 1,2-diphenyl-3-methyl-2-propionoxybutane).
  - c. 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol, its salts, optical and geometric isomers and salts of these isomers including Tramadol.
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. Alfaxalone.
  - c. Barbital.
  - d. Brexanolone.
  - e. Bromazepam.
  - f. Camazepam.
  - g. Carisoprodol.
  - h. Chloral betaine.
  - i. Chloral hydrate.
  - j. Chlordiazepoxide.
  - k. Clobazam.
  - l. Clonazepam.
  - m. Clorazepate.
  - n. Clotiazepam.
  - o. Cloxazolam.
  - p. Daridorexant.
  - p-q. Delorazepam.
  - q-r. Diazepam.

r-s. Dichloralphenazone.

s-t. Estazolam.

t-u. Ethchlorvynol.

u-v. Ethinamate.

v-w. Ethyl loflazepate.

w-x. Fludiazepam.

x-y. Flunitrazepam.

y-z. Flurazepam.

z-aa. Fospropofol.

aa-bb. Halazepam.

bb-cc. Haloxazolam.

cc-dd. Indiplon.

dd-ee. Ketazolam.

ee-ff. Lemborexant.

ff-gg. Loprazolam.

gg-hh. Lorazepam.

hh-ii. Lorcaserin.

ii-jj. Lormetazepam.

jj-kk. Mebutamate.

kk-ll. Medazepam.

ll-mm. Meprobamate.

mm-nn. Methohexital.

nn-oo. Methylphenobarbital (also known as mephobarbital).

oo-pp. Midazolam.

pp-qq. Nimetazepam.

qq-rr. Nitrazepam.

rr-ss. Nordiazepam.

ss-tt. Oxazepam.

tt-uu. Oxazolam.

uu-vv. Paraldehyde.

vv-ww. Petrichloral.

ww-xx. Phenobarbital.

xx-yy. Pinazepam.

yy-zz. Propofol.

zz-aaa. Prazepam.

aaa-bbb. Quazepam.

bbb-ccc. Remimazolam.

ccc-ddd. Suvorexant.

ddd-eee. Temazepam.

eee-fff. Tetrazepam.

fff-ggg. Triazolam.

ggg-hhh. Zaleplon.

hhh-iii. Zolpidem.

iii-jjj. Zopiclone.

5. ~~Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.~~
- 6-5. 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, including its salts, isomers, and salts of isomers:
- Cathine.
  - Diethylpropion.
  - Fencamfamin.
  - Fenproporex.
  - Mazindol.
  - Mefenorex.
  - Modafinil.

- h. Pemoline (including organometallic complexes and chelates thereof).
  - i. Phentermine.
  - j. Pipradrol.
  - k. Serdexmethylphenidate.
  - l. Sibutramine.
  - ~~l.m.~~ Solriamfetol.
  - ~~m.n.~~ SPA ((-)-1-dimethylamino-1, 2-diphenylethane).
- 7-6. Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of:
- a. Pentazocine, including its salts.
  - b. Butorphanol, including its optical isomers.
  - c. Eluxadoline (5-[[[(2*S*)-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl]](1*S*)-1-(4-phenyl-1*H*-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid) (including its optical isomers) and its salts, isomers, and salts of isomers.
- 8-7. The board may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection 2 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

**SECTION 3. AMENDMENT.** Section 19-03.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.1-13. Schedule V.**

1. The controlled substances listed in this section are included in schedule V.
2. Schedule V consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.
3. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts.
4. Narcotic drugs containing non-narcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which includes one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the

compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone.

- a. Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.
  - b. Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.
  - c. Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.
  - d. Ganaxolone (3alpha-hydroxy-3beta-methyl-5alpha-pregnan-20-one).
  - e. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
  - e-f. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.
  - f-g. Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
5. Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible:
- a. Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl]butanamide) (also referred to as BRV; UCB-34714; Briviact) (including its salts).
  - b. Cenobamate [(1R)-1-(2-chlorophenyl)-2-(tetrazol-2-yl)ethyl] carbamate; 2H-tetrazole-2-ethanol, alpha-(2-chlorophenyl)-, carbamate (ester), (alphaR)-; carbamic acid (R)-(+)-1-(2-chlorophenyl)-2-(2H-tetrazol-2-yl)ethyl ester).
  - c. Ezogabine N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester.
  - d. Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide].
  - e. Lasmiditan [2,4,6-trifluoro-N-(6-(1-methylpiperidine-4-carbonyl)pyridine-2-yl)-benzamide].
  - f. Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].
  - g. Gabapentin [2-[1-(aminomethyl) cyclohexyl] acetic acid].
6. Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers: Pyrovalerone.

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

Approved April 12, 2023

Filed April 13, 2023

## CHAPTER 211

### HOUSE BILL NO. 1459

(Representatives Mitskog, Heinert, Schneider)  
(Senator Larson)

AN ACT to amend and reenact section 19-03.1-23.1 of the North Dakota Century Code, relating to increased penalties for drug offenses within three hundred feet of a public park; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 19-03.1-23.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **19-03.1-23.1. Increased penalties for aggravating factors in drug offenses - Penalty.**

1. A person who violates section 19-03.1-23 is subject to the penalties provided in subsection 2 if:
  - a. The offense was committed during a school sponsored activity or was committed during the hours of six a.m. to ten p.m. if school is in session, the offense involved the manufacture, delivery, or possession, with intent to manufacture or deliver a controlled substance in, on, or within three hundred feet [91.4 meters] of the real property comprising a preschool facility, a public or private elementary or secondary school, or a public career and technical education school, the defendant was at least twenty-one years of age at the time of the offense, and the offense involved the delivery of a controlled substance to a minor;
  - b. The offense involved the manufacture, delivery, or possession, with intent to manufacture or deliver a controlled substance, other than marijuana or tetrahydrocannabinol, in, on, or within three hundred feet [91.4 meters] of the real property comprising a public park;
  - c. The offense involved:
    - (1) Fifty grams or more of a mixture or substance containing a detectable amount of heroin;
    - (2) Fifty grams or more of a mixture or substance containing a detectable amount of:
      - (a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
      - (b) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

- (c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
  - (d) Any compound, mixture, or preparation that contains any quantity of any of the substance referred to in subparagraphs a through c;
- (3) Twenty-eight grams or more of a mixture or substance described in paragraph 2 which contains cocaine base;
  - (4) Ten grams or more of phencyclidine or one hundred grams or more of a mixture or substance containing a detectable amount of phencyclidine;
  - (5) One gram, one hundred dosage units, or one-half liquid ounce or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide;
  - (6) Forty grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or ten grams or more of a mixture or substance containing a detectable amount of any analog of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;
  - (7) Fifty grams or more of a mixture or substance containing a detectable amount of methamphetamine;
  - (8) Ten grams, one hundred dosage units, or one-half liquid ounce or more of a mixture or substance containing a detectable amount of 3,4-methylenedioxy-N-methylamphetamine, C<sub>11</sub>H<sub>15</sub>NO<sub>2</sub>;
  - (9) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of gamma-hydroxybutyrate or gamma-butyrolactone or 1,4 butanediol or any substance that is an analog of gamma-hydroxybutyrate; or
  - (10) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of flunitrazepam; or
- d-d. The defendant had a firearm in the defendant's actual possession at the time of the offense; or
- d-e. The defendant sells, distributes, delivers, or conspires to deliver a controlled substance to an individual which results in the death of the individual due to the use of that controlled substance and the death of the individual would not have occurred in the absence of the defendant's conduct. This subdivision does not apply to an individual who is immune from prosecution under section 19-03.1-23.4.
2. The offense is:
- a. A class A felony if the violation of section 19-03.1-23 is designated as a class B felony.
  - b. A class B felony if the violation of section 19-03.1-23 is designated as a class C felony.

- c. A class C felony if the violation of section 19-03.1-23 is designated as a class A misdemeanor.

Approved April 7, 2023

Filed April 10, 2023

## CHAPTER 212

### HOUSE BILL NO. 1478

(Representatives Schneider, Beltz, Cory, Dobervich, O'Brien, M. Ruby, Steiner, Vetter)  
(Senators Braunberger, Mathern, Piepkorn)

AN ACT to create and enact a new section to chapter 19-24.1 of the North Dakota Century Code, relating to the self-certification of an individual admitted into the hospice program for the medical use of marijuana; and to amend and reenact section 19-24.1-04.1 of the North Dakota Century Code, relating to designated caregivers and criminal history record check exemptions.

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

**SECTION 1.** A new section to chapter 19-24.1 of the North Dakota Century Code is created and enacted as follows:

##### **Qualifying patients - Hospice program.**

In lieu of the written certification required under section 19-24.1-03, an individual admitted into the hospice program as defined in chapter 23-17.4 may submit to the department a copy of the individual's medical records identifying a designation of being admitted into the hospice program. The department may use medical records in place of a written certification to approve or deny the application under section 19-24.1-05. The department shall issue a registry identification card within fourteen calendar days of approving an application under this section. The department shall waive the registration fee for a qualifying patient applicant admitted into the hospice program.

**SECTION 2. AMENDMENT.** Section 19-24.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **19-24.1-04.1. Designated caregivers - Criminal history record check exemption.**

The department may waive the requirement for a registered designated caregiver to obtain a criminal history record check under section 12-60-24 if the registered designated caregiver is solely assisting a registered qualifying patient whose debilitating medical condition is a terminal illness or if the registered designated caregiver is solely assisting a registered qualifying patient who is admitted into the hospice program. A registered designated caregiver seeking a waiver under this section shall provide the department with a written statement attesting the caregiver has not been convicted of a drug-related misdemeanor offense within the five years preceding the date of application or a felony offense. If a waiver is issued under this section, the registered designated caregiver's registry identification card is valid for a period not to exceed six months.

Approved March 23, 2023

Filed March 23, 2023

## CHAPTER 213

### SENATE BILL NO. 2068

(Senators K. Roers, Hogan, Lee)  
(Representatives Beltz, Dobervich, M. Ruby)

AN ACT to amend and reenact subsection 2 of section 19-24.1-01 of the North Dakota Century Code, relating to the maximum concentration or amount of tetrahydrocannabinol permitted in a thirty-day period.

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

<sup>113</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 19-24.1-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Allowable amount of usable marijuana" means the amount of usable marijuana a registered qualifying patient or registered designated caregiver may purchase in a thirty-day period under this chapter.
  - a. Except as provided under subdivision b:
    - (1) During a thirty-day period, a registered qualifying patient may not purchase or have purchased by a registered designated caregiver more than two and one-half ounces [70.87 grams] of dried leaves or flowers of the plant of genus cannabis in a combustible delivery form.
    - (2) At any time a registered qualifying patient, or a registered designated caregiver on behalf of a registered qualifying patient, may not possess more than three ounces [85.05 grams] of dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form.
  - b. Notwithstanding subdivision a, if a registered qualifying patient has a registry identification card authorizing an enhanced allowable amount:
    - (1) During a thirty-day period a registered qualifying patient may not purchase or have purchased by a registered designated caregiver more than six ounces [170.01 grams] of dried leaves or flowers of the plant of genus cannabis in a combustible delivery form.
    - (2) At any time a registered qualifying patient, or a registered designated caregiver on behalf of a registered qualifying patient, may not possess more than seven and one-half ounces [212.62 grams] of dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form.
  - c. A registered qualifying patient may not purchase or have purchased by a registered designated caregiver more than the maximum concentration or amount of tetrahydrocannabinol permitted in a thirty-day period. The maximum concentration or amount of tetrahydrocannabinol permitted in a

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<sup>113</sup> Section 19-24.1-01 was also amended by section 6 of House Bill No. 1038, chapter 65, and section 2 of Senate Bill No. 2102, chapter 214.

thirty-day period for a cannabinoid concentrate or medical cannabinoid product, or the cumulative total of both, is ~~four~~six thousand milligrams.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 214

### SENATE BILL NO. 2102

(Human Services Committee)

(At the request of the Department of Health and Human Services)

AN ACT to amend and reenact subdivision n of subsection 2 of section 12-60-24 and sections 19-24.1-01 and 23-01-08.1 of the North Dakota Century Code, relating to fingerprint-based criminal history record checks for the department of health and human services, and compassion centers.

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

<sup>114</sup> **SECTION 1. AMENDMENT.** Subdivision n of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- n. The department of health and human services for a final applicant for a job opening or a current employee with the department ~~as designated by the state health officer; an individual being investigated by the department; or, when requested by the department,~~ an applicant for registration as a designated caregiver or a compassion center agent under chapter 19-24.1.

<sup>115</sup> **SECTION 2. AMENDMENT.** Section 19-24.1-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **19-24.1-01. Definitions.**

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

1. "Advanced practice registered nurse" means an advanced practice registered nurse defined under section 43-12.1-02.
2. "Agent" means an individual who is authorized to act for, in place of, or on behalf of a compassion center.
3. "Allowable amount of usable marijuana" means the amount of usable marijuana a registered qualifying patient or registered designated caregiver may purchase in a thirty-day period under this chapter.

- a. Except as provided under subdivision b:

- (1) During a thirty-day period, a registered qualifying patient may not purchase or have purchased by a registered designated caregiver more than two and one-half ounces [70.87 grams] of dried leaves or flowers of the plant of genus cannabis in a combustible delivery form.

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<sup>114</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1191, chapter 447, section 1 of Senate Bill No. 2051, chapter 274, and section 1 of Senate Bill No. 2076, chapter 120.

<sup>115</sup> Section 19-24.1-01 was also amended by section 6 of House Bill No. 1038, chapter 65, and section 1 of Senate Bill No. 2068, chapter 213.

- (2) At any time a registered qualifying patient, or a registered designated caregiver on behalf of a registered qualifying patient, may not possess more than three ounces [85.05 grams] of dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form.
  - b. Notwithstanding subdivision a, if a registered qualifying patient has a registry identification card authorizing an enhanced allowable amount:
    - (1) During a thirty-day period a registered qualifying patient may not purchase or have purchased by a registered designated caregiver more than six ounces [170.01 grams] of dried leaves or flowers of the plant of genus cannabis in a combustible delivery form.
    - (2) At any time a registered qualifying patient, or a registered designated caregiver on behalf of a registered qualifying patient, may not possess more than seven and one-half ounces [212.62 grams] of dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form.
  - c. A registered qualifying patient may not purchase or have purchased by a registered designated caregiver more than the maximum concentration or amount of tetrahydrocannabinol permitted in a thirty-day period. The maximum concentration or amount of tetrahydrocannabinol permitted in a thirty-day period for a cannabinoid concentrate or medical cannabinoid product, or the cumulative total of both, is four thousand milligrams.
- 3-4. "Bona fide provider-patient relationship" means a treatment or counseling relationship between a health care provider and patient in which all the following are present:
- a. The health care provider has reviewed the patient's relevant medical records and completed a full assessment of the patient's medical history and current medical condition, including a relevant, in-person, medical evaluation of the patient.
  - b. The health care provider has created and maintained records of the patient's condition in accordance with medically accepted standards.
  - c. The patient is under the health care provider's continued care for the debilitating medical condition that qualifies the patient for the medical use of marijuana.
  - d. The health care provider has a reasonable expectation that provider will continue to provide followup care to the patient to monitor the medical use of marijuana as a treatment of the patient's debilitating medical condition.
  - e. The relationship is not for the sole purpose of providing written certification for the medical use of marijuana.
- 4-5. "Cannabinoid" means a chemical compound that is one of the active constituents of marijuana.
- 5-6. "Cannabinoid capsule" means a small, soluble container, usually made of gelatin, which encloses a dose of a cannabinoid product or a cannabinoid concentrate intended for consumption. The maximum concentration of amount

of tetrahydrocannabinol permitted in a serving of a cannabinoid capsule is fifty milligrams.

- 6-7. "Cannabinoid concentrate" means a concentrate or extract obtained by separating cannabinoids from marijuana by a mechanical, chemical, or other process.
- 7-8. "Cannabinoid edible product" means a food or potable liquid into which a cannabinoid concentrate or the dried leaves or flowers of the plant of the genus cannabis is incorporated.
- 8-9. "Cannabinoid solution" means a solution consisting of a mixture created from cannabinoid concentrate and other ingredients. A container holding a cannabinoid solution for dispensing may not exceed thirty milliliters.
- 9-10. "Cannabinoid topical" means a cannabinoid product intended to be applied to the skin or hair. The maximum concentration or amount of tetrahydrocannabinol permitted in a cannabinoid topical is six percent.
- 10-11. "Cannabinoid transdermal patch" means an adhesive substance applied to the skin which contains a cannabinoid product or cannabinoid concentrate for absorption into the bloodstream. The maximum concentration or amount of tetrahydrocannabinol permitted in a serving of a cannabinoid transdermal patch is fifty milligrams.
- 11-12. "Cardholder" means a qualifying patient, designated caregiver, or compassion center agent who has been issued and possesses a valid registry identification card.
- 12-13. "Compassion center" means a manufacturing facility or dispensary.
- 13-14. "Compassion center agent" means a principal officer, board member, member, manager, governor, employee, volunteer, or agent of a compassion center. The term does not include a lawyer representing a compassion center in civil or criminal litigation or in an adversarial administrative proceeding.
- 14-15. "Contaminated" means made impure or inferior by extraneous substances.
- 15-16. "Debilitating medical condition" means one of the following:
- a. Cancer;
  - b. Positive status for human immunodeficiency virus;
  - c. Acquired immune deficiency syndrome;
  - d. Decompensated cirrhosis caused by hepatitis C;
  - e. Amyotrophic lateral sclerosis;
  - f. Posttraumatic stress disorder;
  - g. Agitation of Alzheimer's disease or related dementia;
  - h. Crohn's disease;

- i. Fibromyalgia;
- j. Spinal stenosis or chronic back pain, including neuropathy or damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity;
- k. Glaucoma;
- l. Epilepsy;
- m. Anorexia nervosa;
- n. Bulimia nervosa;
- o. Anxiety disorder;
- p. Tourette syndrome;
- q. Ehlers-Danlos syndrome;
- r. Endometriosis;
- s. Interstitial cystitis;
- t. Neuropathy;
- u. Migraine;
- v. Rheumatoid arthritis;
- w. Autism spectrum disorder;
- x. A brain injury;
- y. A terminal illness; or
- z. A chronic or debilitating disease or medical condition or treatment for such disease or medical condition that produces one or more of the following:
  - (1) Cachexia or wasting syndrome;
  - (2) Severe debilitating pain that has not responded to previously prescribed medication or surgical measures for more than three months or for which other treatment options produced serious side effects;
  - (3) Intractable nausea;
  - (4) Seizures; or
  - (5) Severe and persistent muscle spasms, including those characteristic of multiple sclerosis.

46-17. "Department" means the department of health and human services.

- 17-18. "Designated caregiver" means an individual who agrees to manage the well-being of a registered qualifying patient with respect to the qualifying patient's medical use of marijuana.
- 18-19. "Dispensary" means an entity registered by the department as a compassion center authorized to dispense usable marijuana to a registered qualifying patient and a registered designated caregiver.
- 19-20. "Enclosed, locked facility" means a closet, room, greenhouse, building, or other enclosed area equipped with locks or other security devices that permit access limited to individuals authorized under this chapter or rules adopted under this chapter.
- 20-21. "Health care provider" means a physician, a physician assistant, or an advanced practice registered nurse.
22. "Manager" means an individual who administers or supervises the day-to-day operations and affairs of a compassion center.
- 21-23. "Manufacturing facility" means an entity registered by the department as a compassion center authorized to produce and process and to sell usable marijuana to a dispensary.
- 22-24. "Marijuana" means all parts of the plant of the genus cannabis; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the plant, or the resin extracted from any part of the plant. The term marijuana does not include:
- a. Hemp as regulated under section 4.1-18.1-01; or
  - b. A prescription drug approved by the United States food and drug administration under section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355].
- 23-25. "Maximum concentration or amount of tetrahydrocannabinol" means the total amount of tetrahydrocannabinol and tetrahydrocannabinolic acid in a medical cannabinoid product or a cannabinoid concentrate.
- 24-26. "Medical cannabinoid product" means a product intended for human consumption or use which contains cannabinoids.
- a. Medical cannabinoid products are limited to the following forms:
    - (1) Cannabinoid solution;
    - (2) Cannabinoid capsule;
    - (3) Cannabinoid transdermal patch; and
    - (4) Cannabinoid topical.
  - b. "Medical cannabinoid product" does not include:
    - (1) A cannabinoid edible product;

(2) A cannabinoid concentrate by itself; or

(3) The dried leaves or flowers of the plant of the genus cannabis by itself.

25-27. "Medical marijuana product" means a cannabinoid concentrate or a medical cannabinoid product.

26-28. "Medical marijuana waste" means unused, surplus, returned, or out-of-date usable marijuana; recalled usable marijuana; unused marijuana; or plant debris of the plant of the genus cannabis, including dead plants and all unused plant parts and roots.

27-29. "Medical use of marijuana" means the acquisition, use, and possession of usable marijuana to treat or alleviate a qualifying patient's debilitating medical condition.

30. "Member" means an individual who has a ten percent or more ownership interest in the compassion center limited liability company, limited liability partnership, or partnership.

28-31. "Minor" means an individual under the age of nineteen.

29-32. "North Dakota identification" means a North Dakota driver's license or comparable state of North Dakota or federal issued photo identification card verifying North Dakota residence.

30-33. "Owner" means an individual or an organization with an ownership interest in a compassion center.

31-34. "Ownership interest" means an aggregate ownership interest of five percent or more in a compassion center, unless the interest is solely a security, lien, or encumbrance, or an individual who will be participating in the direction, control, or management of the compassion center.

32-35. "Pediatric medical marijuana" means a medical marijuana product containing cannabidiol which may not contain a maximum concentration or amount of tetrahydrocannabinol of more than six percent.

33-36. "Physician" means a physician licensed under chapter 43-17 to practice medicine in the state of North Dakota.

34-37. "Physician assistant" means an individual licensed under chapter 43-17 to practice as a physician assistant in the state.

35-38. "Posttraumatic stress disorder" means a patient meets the diagnostic criteria for posttraumatic stress disorder under the "Diagnostic and Statistical Manual of Mental Disorders", American psychiatric association, fifth edition, text revision (2013).

36-39. "Processing" or "process" means the compounding or conversion of marijuana into a medical marijuana product.

37-40. "Producing", "produce", or "production" mean the planting, cultivating, growing, trimming, or harvesting of the plant of the genus cannabis or the drying of the leaves or flowers of the plant of the genus cannabis.

- 38-41. "Qualifying patient" means an individual who has been diagnosed by a health care provider as having a debilitating medical condition.
- 39-42. "Registry identification card" means a document issued by the department which identifies an individual as a registered qualifying patient, registered designated caregiver, or registered compassion center agent.
- 40-43. "Substantial corporate change" means:
- For a corporation, a change of ten percent or more of the officers or directors, or a transfer of ten percent or more of the stock of the corporation, or an existing stockholder obtaining ten percent or more of the stock of the corporation;
  - For a limited liability company, a change of ten percent or more of the managing members of the company, or a transfer of ten percent or more of the ownership interest in the company, or an existing member obtaining a cumulative of ten percent or more of the ownership interest in the company; or
  - For a partnership, a change of ten percent or more of the managing partners of the company, or a transfer of ten percent or more of the ownership interest in the company, or an existing member obtaining a cumulative of ten percent or more of the ownership interest in the company.
- 41-44. "Terminal illness" means a disease, illness, or condition of a patient:
- For which there is not a reasonable medical expectation of recovery;
  - Which as a medical probability, will result in the death of the patient, regardless of the use or discontinuance of medical treatment implemented for the purpose of sustaining life or the life processes; and
  - As a result of which, the patient's health care provider would not be surprised if death were to occur within six months.
- 42-45. "Tetrahydrocannabinol" means tetrahydrocannabinols naturally contained in a plant of the genus cannabis, and synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of the plant, including synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, including:
- (1) Delta-1 cis or trans tetrahydrocannabinol, and their optical isomers. Other names: Delta-9-tetrahydrocannabinol.
  - (2) Delta-6 or trans tetrahydrocannabinol, and their optical isomers. Other names: Delta-8 tetrahydrocannabinol.
  - (3) Delta-3, 4 cis or trans tetrahydrocannabinol, and its optical isomers.
- (Since nomenclature of these substances is not intentionally standardized, compounds of these structures, regardless of numerical designation or atomic positions covered.)

b. Tetrahydrocannabinol does not include:

- (1) The allowable amount of total tetrahydrocannabinol found in hemp as defined in chapter 4.1-18.1; or
- (2) A prescription drug approved by the United States food and drug administration under section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355].

43-46. "Total tetrahydrocannabinol" means the sum of the percentage by weight of tetrahydrocannabinolic acid multiplied by eight hundred seventy-seven thousandths plus the percentage of weight of tetrahydrocannabinol.

44-47. "Usable marijuana" means a medical marijuana product or the dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form. However, the term does not include a cannabinoid edible product. In the case of a registered qualifying patient who is a minor, "usable marijuana" is limited to pediatric medical marijuana.

45-48. "Verification system" means the system maintained by the department under section 19-24.1-31 for verification of registry identification cards.

46-49. "Written certification" means a form established by the department which is executed, dated, and signed by a health care provider within ninety calendar days of the date of application, stating the patient has a debilitating medical condition. A health care provider may authorize an enhanced amount of dried leaves or flowers of the plant of the genus cannabis in a combustible delivery form to treat or alleviate the patient's debilitating medical condition of cancer. A written certification may not be made except in the course of a bona fide provider-patient relationship.

<sup>116</sup> **SECTION 3. AMENDMENT.** Section 23-01-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**23-01-08.1. Criminal history background checks.**

The department of health and human services may require a final applicant for a job opening or a current employee with the department, ~~as designated by the state health officer,~~ complete a state and national criminal history record check as provided under section 12-60-24.

Approved March 14, 2023

Filed March 15, 2023

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<sup>116</sup> Section 23-01-08.1 was also amended by section 17 of House Bill No. 1165, chapter 229.

## CHAPTER 215

### SENATE BILL NO. 2201

(Senators Meyer, Cleary, K. Roers)  
(Representatives Dockter, Mock, O'Brien)

AN ACT to amend and reenact subdivision a of subsection 2 of section 19-24.1-03, subsection 3 of section 19-24.1-04, subsection 2 of section 19-24.1-18, subdivision a of subsection 3 of section 19-24.1-18, and subsection 1 of section 19-24.1-24 of the North Dakota Century Code, relating to medical marijuana certification and application fees; and to provide for a legislative management study.

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

**SECTION 1. AMENDMENT.** Subdivision a of subsection 2 of section 19-24.1-03 of the North Dakota Century Code is amended and reenacted as follows:

- a. A nonrefundable application fee in an amount not to exceed ~~fifty~~twenty-five dollars.

**SECTION 2. AMENDMENT.** Subsection 3 of section 19-24.1-04 of the North Dakota Century Code is amended and reenacted as follows:

3. Except as provided in section 19-24.1-04.1, a criminal history record check conducted under section 12-60-24 must be performed upon initial application and biennially thereafter and at any other time upon the request of the department. All fees associated with the criminal history record check must be paid by the applicant~~department~~.

<sup>117</sup> **SECTION 3. AMENDMENT.** Subsection 2 of section 19-24.1-18 of the North Dakota Century Code is amended and reenacted as follows:

2. To qualify to be issued a registry identification card, each compassion center agent must be at least twenty-one years of age and shall submit all of the following registry identification card application material to the department:
  - a. A photographic copy of the agent's department-approved identification. The agent shall make the identification available for inspection and verification by the department.
  - b. A recent two-by-two inch [5.08-by-5.08 centimeter] photograph of the agent.
  - c. A written and signed statement from an officer or executive staff member of the compassion center stating the applicant is associated with the compassion center and the capacity of the association.

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<sup>117</sup> Section 19-24.1-18 was also amended by section 3 of Senate Bill No. 2078, chapter 217, section 4 of Senate Bill No. 2201, chapter 215, and section 2 of Senate Bill No. 2388, chapter 216.

- d. The name, address, and telephone number of the agent.
- e. The name, address, and telephone number of the compassion center with which the agent is associated.
- f. The agent's signature and the date.
- g. A nonrefundable application or renewal fee ~~is not to exceed~~ the amount of two hundred dollars.

<sup>118</sup> **SECTION 4. AMENDMENT.** Subdivision a of subsection 3 of section 19-24.1-18 of the North Dakota Century Code is amended and reenacted as follows:

- a. All applicable fees associated with the required criminal history record checks must be paid by the ~~compassion center or the agent~~ department.

**SECTION 5. AMENDMENT.** Subsection 1 of section 19-24.1-24 of the North Dakota Century Code is amended and reenacted as follows:

1. A manufacturing facility shall grow an amount of marijuana sufficient to meet the qualifying patient population demands. For every five hundred plants in excess of one thousand plants a manufacturing facility possesses, the manufacturing facility shall pay the department an additional certification fee of ~~ten thousand~~ not to exceed seven thousand five hundred dollars. This fee is due at the time of increase and again at renewal of the compassion center registration certificate under section 19-24.1-16.

**SECTION 6. LEGISLATIVE MANAGEMENT STUDY - COMPASSION CENTER CERTIFICATION.** During the 2023-24 interim, the legislative management, in collaboration with the department of health and human services, shall consider studying the administrative costs involved in certifying a compassion center. The study must include information on the amount and frequency of certification fees, a description of additional costs associated with certification, an explanation of how the department uses the certification fees once they are collected, a recommendation of the best way to lower administrative costs while maintaining the integrity of the department's medical marijuana program, and a prediction on whether the lowering of administrative costs will help to lower consumer costs on medical marijuana purchased from a compassion center. The legislative management shall report its findings and recommendations to the sixty-ninth legislative assembly.

Approved April 26, 2023

Filed April 26, 2023

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<sup>118</sup> Section 19-24.1-18 was also amended by section 3 of Senate Bill No. 2078, chapter 217, section 3 of Senate Bill No. 2201, chapter 215, and section 2 of Senate Bill No. 2388, chapter 216.

## CHAPTER 216

### SENATE BILL NO. 2388

(Senators Larsen, Barta)  
(Representative Mock)

AN ACT to amend and reenact sections 19-24.1-05, 19-24.1-18, 19-24.1-19, and 19-24.1-34 of the North Dakota Century Code, relating to reapplication for registered identification cards for marijuana and acts associated with marijuana not prohibited from employee discipline; and to declare an emergency.

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

<sup>119</sup> **SECTION 1. AMENDMENT.** Section 19-24.1-05 of the North Dakota Century Code is amended and reenacted as follows:

#### **19-24.1-05. Qualifying patients and designated caregivers - Identification cards - Issuance and denial.**

1. Upon receipt of a complete application for or renewal of a qualifying patient or designated caregiver registry identification card, the department shall verify the submitted information.
2. The verification methods used by the department on an application or renewal and accompanying documentation may include:
  - a. Contacting an applicant by telephone or mail, or if proof of identity is uncertain, the department shall require a face-to-face meeting and the production of additional identification materials;
  - b. Contacting the North Dakota board of medicine or North Dakota board of nursing to verify the certifying health care provider is licensed in the state and is in good standing; and
  - c. Contacting the health care provider to obtain additional documentation verifying the qualifying patient applicant's medical diagnosis and medical condition qualify the applicant for participation in the medical marijuana program.
3. Upon verification of the information contained in an application or renewal, the department shall approve or deny the application or renewal.
4. Except as provided in subsection 5, the department shall issue a registry identification card within thirty calendar days of approving an application or renewal. A designated caregiver must have a registry identification card for each of the designated caregiver's registered qualifying patients.
5. The department may not issue a registry identification card to a qualifying patient who is a minor unless:

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<sup>119</sup> Section 19-24.1-05 was also amended by section 1 of Senate Bill No. 2078, chapter 217.

- a. The department receives documentation the minor's health care provider has explained to the parent or legal guardian with responsibility for health care decisions for the minor the potential risks of the use of pediatric medical marijuana; and
- b. The department receives documentation the parent or legal guardian with responsibility for health care decisions for the minor consents in writing to:
  - (1) Allow the minor's use of pediatric medical marijuana to treat or alleviate the debilitating medical condition;
  - (2) Serve as the minor's designated caregiver or identifies a registered designated caregiver to act as the minor's designated caregiver;
  - (3) Control the acquisition of usable marijuana and control the dosage and frequency of the use of usable marijuana by the minor; and
  - (4) If serving as the minor's designated caregiver, prevent the minor from accessing the usable marijuana by storing the usable marijuana in an enclosed, locked facility.
6. If the department denies an application or renewal, the applicant may not reapply for one year from the date of the denial, unless otherwise authorized by the department, and the applicant is prohibited from all lawful privileges provided under this chapter.
7. The department shall deny an application for or renewal of a qualifying patient's registry identification card if the applicant:
  - a. Does not meet the requirements of this section or section 19-24.1-03;
  - b. Did not provide the required information and materials;
  - c. Previously had a registry identification card revoked; ~~or which involved unauthorized minor transfer, use, or access to usable marijuana or the use of usable marijuana which allowed the smoke or vapor to be inhaled by a minor;~~
  - d. Provided false or falsified information or made a material misstatement; or
  - e. Previously had a registry identification card revoked three times.
8. The department shall deny an application for or renewal of a designated caregiver registry identification card if the designated caregiver applicant:
  - a. Does not meet the requirements of this section or section 19-24.1-04;
  - b. Did not provide the required information and materials;
  - c. Previously had a registry identification card revoked ~~which involved unauthorized minor transfer, use, or access to usable marijuana or the use of usable marijuana which allowed the smoke or vapor to be inhaled by a minor;~~ or
  - d. Provided false or falsified information or made a material misstatement; or

- e. Previously had a registry identification card revoked three times.
9. Notwithstanding subsection 8, the department shall deny an application for or renewal of a qualifying patient or designated caregiver registry identification card for one year from the date of an initial revocation and five years from the date of a second revocation.
10. A registered qualifying patient may have no more than five registered designated caregivers.
- 40-11. The department shall notify, in writing, the qualifying patient or designated caregiver applicant of the reason for denying an application or renewal.
- 44-12. The department shall notify the following in writing:
- A registered qualifying patient if that patient's designated caregiver's application or renewal is denied; and
  - A registered designated caregiver if that caregiver's qualifying patient's application or renewal is denied.
- 42-13. The cardholder may appeal a denial or revocation of a registry identification card to the district court of Burleigh County for hearing. The court may authorize the cardholder to appear by reliable electronic means.

<sup>120</sup> **SECTION 2. AMENDMENT.** Section 19-24.1-18 of the North Dakota Century Code is amended and reenacted as follows:

**19-24.1-18. Compassion centers - Agents - Registry identification cards.**

- Upon issuance of a compassion center registry certificate, the department shall issue a registry identification card to each qualified compassion center agent associated with the compassion center.
- To qualify to be issued a registry identification card, each compassion center agent must be at least twenty-one years of age and shall submit all of the following registry identification card application material to the department:
  - A photographic copy of the agent's department-approved identification. The agent shall make the identification available for inspection and verification by the department.
  - A recent two-by-two inch [5.08-by-5.08 centimeter] photograph of the agent.
  - A written and signed statement from an officer or executive staff member of the compassion center stating the applicant is associated with the compassion center and the capacity of the association.
  - The name, address, and telephone number of the agent.

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<sup>120</sup> Section 19-24.1-18 was also amended by section 3 of Senate Bill No. 2078, chapter 217, section 3 of Senate Bill No. 2201, chapter 215, and section 4 of Senate Bill No. 2201, chapter 215.

- e. The name, address, and telephone number of the compassion center with which the agent is associated.
  - f. The agent's signature and the date.
  - g. A nonrefundable application or renewal fee in the amount of two hundred dollars.
3. Each compassion center agent shall consent to a criminal history record check conducted under section 12-60-24 to demonstrate compliance with the eligibility requirements.
    - a. All applicable fees associated with the required criminal history record checks must be paid by the compassion center or the agent.
    - b. A criminal history record check must be performed upon initial application and biennially upon renewal. A compassion center agent shall consent to a criminal history record check at any time the department determines necessary.
    - c. An individual convicted of a drug-related misdemeanor offense within the five-year period before the date of application or a felony offense is prohibited from being a compassion center agent.
  4. The department shall notify the compassion center in writing of the purpose for denying a compassion center agent application for a registry identification card. The department shall deny an application if the applicant fails to meet the registration requirements or to provide the information required, if the applicant previously had a registry identification card revoked subject to sections 19-24.1-05, 19-24.1-19, and 19-24.1-20, or if the department determines the information provided is false. The cardholder may appeal a denial or revocation of a registry identification card to the district court of Burleigh County for hearing. The court may authorize the cardholder to appear by reliable electronic means.
  5. The department shall issue a compassion center agent a registry identification card within thirty calendar days of approval of an application.
  6. A compassion center agent with a registry identification card shall notify the department of any of the following within ten calendar days of the change, in a manner prescribed by the department:
    - a. A change in the cardholder's name or address; and
    - b. Knowledge of a change that would render the compassion center agent no longer eligible to be a cardholder.
  7. If a compassion center agent loses the agent's registry identification card, that agent shall notify the department in writing within twenty-four hours of becoming aware the card has been lost.
  8. If a cardholder notifies the department of items listed in this section but the nature of the item reported results in the cardholder remaining eligible, the department shall issue the cardholder a new registry identification card with a new random ten-digit alphanumeric identification number within twenty

calendar days of approving the updated information and the cardholder shall pay a fee, not to exceed twenty-five dollars. If a cardholder notifies the department of an item that results in the cardholder being ineligible, the registry identification card immediately becomes void.

9. A compassion center shall notify the department in writing within two calendar days of the date a compassion center agent ceases to work for or be associated with the compassion center. Upon receipt of the notification, that individual's registry identification card becomes void immediately.
10. The registry identification card of a compassion center agent expires one year after issuance or upon the termination of the compassion center's registration certificate, whichever occurs first. To prevent interruption of possession of a valid registry identification card, a compassion center agent shall renew a registry identification card by submitting a complete renewal application no less than forty-five calendar days before the expiration date of the existing registry identification card.

<sup>121</sup> **SECTION 3. AMENDMENT.** Section 19-24.1-19 of the North Dakota Century Code is amended and reenacted as follows:

**19-24.1-19. Cardholders - Compassion centers - Revocation.**

1. The department may suspend or revoke a cardholder's registry identification card or a compassion center's registration certificate for a material misstatement by an applicant in an application or renewal.
2. The department may suspend or revoke a registry identification card or registration certificate for a violation of this chapter or rules adopted under this chapter.
3. If a compassion center agent or a compassion center sells or otherwise transfers marijuana or usable marijuana to a person not authorized to possess marijuana or usable marijuana under this chapter, the department shall revoke the cardholder's registry identification card or the compassion center's registration certificate, or both. If the department revokes a cardholder's registry identification card under this subsection, the cardholder may not reapply for one year from the date of an initial revocation and five years from the date of a second revocation. Upon a third revocation or if the revocation under this subsection involved unauthorized minor transfer, use, or access to usable marijuana or the use of usable marijuana which allowed the smoke or vapor to be inhaled by a minor, the cardholder is disqualified from further participation under this chapter.
4. The department shall provide written notice of suspension or revocation of a registry identification card or registration certificate.
  - a. A suspension may not be for a period longer than six months.
  - b. A manufacturing facility may continue to produce and process and to possess marijuana and usable marijuana during a suspension, but may not transfer or sell usable marijuana.

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<sup>121</sup> Section 19-24.1-19 was also amended by section 4 of Senate Bill No. 2078, chapter 217.

- c. A dispensary may continue to possess usable marijuana during a suspension, but may not purchase, dispense, or transfer usable marijuana.
- d. The cardholder or the compassion center may appeal a denial or revocation of a registry identification card or registry certificate to the district court of Burleigh County for hearing. The court may authorize the cardholder or compassion center to appear by reliable electronic means.

**SECTION 4. AMENDMENT.** Section 19-24.1-34 of the North Dakota Century Code is amended and reenacted as follows:

**19-24.1-34. Acts not prohibited - Acts not required.**

1. This chapter does not require:
  - a. A government medical assistance program or private insurer to reimburse a person for costs associated with the medical use of marijuana;
  - b. A person in lawful possession of property to allow a guest, client, customer, or other visitor to possess or consume usable marijuana on or in that property;
  - c. A landlord to allow production or processing on rental property; or
  - d. A health care provider to provide a written certification or otherwise recommend marijuana to a patient.
2. This chapter does not prohibit an employer from disciplining an employee for possessing or consuming usable marijuana in the workplace ~~or for~~ working while under the influence of marijuana, or working with marijuana in the employee's system.

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

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 217

### SENATE BILL NO. 2078

(Human Services Committee)

(At the request of the Department of Health and Human Services)

AN ACT to amend and reenact subsection 12 of section 19-24.1-05, subsection 4 of section 19-24.1-09, subsection 4 of section 19-24.1-18, and subsection 4 of section 19-24.1-19 of the North Dakota Century Code, relating to the appeals process for a medical marijuana registry identification card for qualified patients and designated caregivers, referral of credible criminal complaints, and the appeals process for a compassion center agent or compassion center.

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

<sup>122</sup> **SECTION 1. AMENDMENT.** Subsection 12 of section 19-24.1-05 of the North Dakota Century Code is amended and reenacted as follows:

12. The cardholder may appeal a denial or revocation of a registry identification card, within thirty days after notice has been given, to the district court of Burleigh County ~~for hearing~~. The court may authorize the cardholder to appear by reliable electronic means.

**SECTION 2. AMENDMENT.** Subsection 4 of section 19-24.1-09 of the North Dakota Century Code is amended and reenacted as follows:

4. The department ~~shall~~may refer credible criminal complaints against a cardholder to appropriate state or local law enforcement authorities.

<sup>123</sup> **SECTION 3. AMENDMENT.** Subsection 4 of section 19-24.1-18 of the North Dakota Century Code is amended and reenacted as follows:

4. The department shall notify the compassion center in writing of the purpose for denying a compassion center agent application for a registry identification card. The department shall deny an application if the applicant fails to meet the registration requirements or to provide the information required, if the applicant previously had a registry identification card revoked, or if the department determines the information provided is false. The cardholder may appeal a denial or revocation of a registry identification card, within thirty days after notice has been given, to the district court of Burleigh County ~~for hearing~~. The court may authorize the cardholder to appear by reliable electronic means.

<sup>124</sup> **SECTION 4. AMENDMENT.** Subsection 4 of section 19-24.1-19 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>122</sup> Section 19-24.1-05 was also amended by section 1 of Senate Bill No. 2388, chapter 216.

<sup>123</sup> Section 19-24.1-18 was also amended by section 3 of Senate Bill No. 2201, chapter 215, section 4 of Senate Bill No. 2201, chapter 215, and section 2 of Senate Bill No. 2388, chapter 216.

4. The department shall provide written notice of suspension or revocation of a registry identification card or registration certificate.
  - a. A suspension may not be for a period longer than six months.
  - b. A manufacturing facility may continue to produce and process and to possess marijuana and usable marijuana during a suspension, but may not transfer or sell usable marijuana.
  - c. A dispensary may continue to possess usable marijuana during a suspension, but may not purchase, dispense, or transfer usable marijuana.
  - d. The cardholder or the compassion center may appeal a denial or revocation of a registry identification card or registry certificate, within thirty days after notice has been given, to the district court of Burleigh County for hearing. The court may authorize the cardholder or compassion center to appear by reliable electronic means.

Approved March 29, 2023

Filed March 30, 2023

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<sup>124</sup> Section 19-24.1-19 was also amended by section 3 of Senate Bill No. 2388, chapter 216.

# GAME, FISH, PREDATORS, AND BOATING

## CHAPTER 218

### HOUSE BILL NO. 1224

(Representatives Nelson, D. Anderson, Mock, Porter)  
(Senator Klein)

AN ACT to amend and reenact sections 20.1-01-02 and 20.1-05-04 of the North Dakota Century Code, relating to the possession of handguns and use of dogs in the recovery of big game animals.

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

**SECTION 1. AMENDMENT.** Section 20.1-01-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **20.1-01-02. Definitions.**

In this title, unless the context otherwise requires:

1. "Afield" means being away from one's home or camp. The term does not include driving or being in actual physical control of a motor vehicle in violation of section 39-08-01 or equivalent ordinance.
2. "Any part thereof" or "the parts thereof" includes the hide, horns, or hoofs of any animal specified and the plumage, skin, and every other part of any bird specified.
3. "Aquatic nuisance species" means any nonindigenous, obligate aquatic species of plant or animal which is injurious to native and desirable aquatic species or which has a negative effect on aquatic habitats, environment, or the economy of the state.
4. "Associated equipment" means:
  - a. Any system, part, or component of a boat as originally manufactured or any similar part or component manufactured or sold for replacement, repair, or improvement of such system, part, or component;
  - b. Any accessory or equipment for, or appurtenance to, a boat; and
  - c. Any marine safety article, accessory, or equipment intended for use by a person on board a boat; but
  - d. Excluding radio equipment.

5. "Big game" means deer, moose, elk, bighorn sheep, mountain goats, and antelope.
6. "Boat" means any vessel:
  - a. Manufactured or used primarily for noncommercial use;
  - b. Leased, rented, or chartered to another for the latter's noncommercial use; or
  - c. Engaged in the carrying of six or fewer passengers.
7. "Confiscate" or "confiscated" means to hold subject to the order of a court of competent jurisdiction.
8. "Consideration" means something of value given or done in exchange for something of value given or done by another.
9. "Crops" means any plant that has been harvested, collected, or stored as livestock feed, fodder, or fuel.
10. "Day leasing" means the practice of an outfitter entering a short-term lease agreement that is intended to and does last less than twenty-four hours.
11. "Department" means the game and fish department.
12. "Depredation" means damage to or destruction of private property.
13. "Deputy director" means the deputy director of the department.
14. "Director" means the director of the department.
15. "Disabled veteran" means a veteran who has a one hundred percent service-connected disability as determined by the department of veterans' affairs or has an extra-schedular rating to include individual unemployability that brings the veteran's total disability ratio to one hundred percent as determined by the department of veterans' affairs.
16. "Endangered species" means any species whose prospects of survival or recruitment within the state are in jeopardy due to any of the following factors:
  - a. The destruction, drastic modification, or severe curtailment of its habitat.
  - b. Its overutilization for scientific, commercial, or sporting purposes.
  - c. The effect on it of disease, pollution, or predation.
  - d. Other natural or manmade factors affecting its prospects of survival or recruitment within the state.
  - e. Any combination of the foregoing factors.

The term also includes any species classified as endangered pursuant to the Endangered Species Act of 1973, Public Law 93-205.

17. "Established road or trail" means any public highway or road, improved or otherwise, dedicated for public ingress or egress, or any other road or trail normally used for travel but does not include temporary trails across cultivated land used for agricultural purposes.
18. "Fur-bearers" includes mink, muskrats, weasels, wolverines, otters, martens, fishers, kit or swift foxes, beavers, raccoons, badgers, wolves, coyotes, bobcats, lynx, mountain lions, black bears, and red or gray foxes.
19. "Game birds" includes all varieties of geese, brant, swans, ducks, plovers, snipes, woodcocks, grouse, sagehens, pheasants, Hungarian partridges, quails, partridges, cranes, rails, coots, wild turkeys, mourning doves, and crows.
20. "Guide" means an individual who is employed by or contracts with a licensed outfitter to help the outfitter furnish personal services for the conduct of outdoor recreational activities directly related to the conduct of activities for which the employing outfitter is licensed.
21. "Gun dogs" includes any dog used to hunt protected wildlife.
22. "Harmful wild birds" includes blackbirds, magpies, English sparrows, and starlings.
23. "Harmless wild birds" includes all wild birds not defined herein as "harmful wild birds" or "game birds".
24. "Hunt" or "hunting" means shooting, shooting at, pursuing, taking, attempting to take, or killing any game animals and game birds; searching for or attempting to locate or flush any game animals and game birds; luring, calling, or attempting to attract game animals and game birds; hiding for the purpose of taking or attempting to take game animals and game birds; and walking, crawling, or advancing toward wildlife while possessing implements or equipment useful in the taking of game animals or game birds. The term does not include possessing or using photographic equipment.
25. "Hunt through the internet" means to hunt wildlife in real time using internet services to remotely control actual firearms and to remotely discharge live ammunition allowing a person who is not physically present to take wildlife. The term includes using any remotely controlled device to hunt the animal such as a hand-held communication device, cellular telephone, or global-positioning device.
26. "Immediate area" means the surrounding area within one hundred yards [91.44 meters] of the big game animal.
27. "Indian land" means land within the exterior boundaries of an Indian reservation held in trust by the federal government for the benefit of an Indian tribe or an Indian and land within the exterior boundaries of an Indian reservation owned in fee by an Indian tribe or an Indian.
- 27-28. "Introduce" means to place, release, or allow the escape of a non-native species into a free-living state.
- 28-29. "Manufacturer" means any person engaged in:

- a. The manufacture, construction, or assembly of boats or associated equipment.
- b. The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly.
- c. The importation into the state for sale of boats, associated equipment, or components thereof.

29-30. "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion. The term does not include a vessel having a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto.

30-31. "Motor-driven vehicle" means any land vehicle, with or without wheels, that is propelled by any motor.

31-32. "Native aquatic species" means an animal or plant species that is naturally present and reproducing within this state or which naturally expands from its historic range into this state.

32-33. "Non-native species" means a species that is not a native species.

33-34. "Operate" means to navigate or otherwise use a motorboat or a vessel.

34-35. "Outfitter" means a person that holds the person's business operation out to the public for hire or consideration; provides facilities or services for consideration; maintains, leases, or otherwise provides compensation for the use of land and which receives compensation from a third party for use of that land; or otherwise uses equipment or accommodations for consideration for the conduct of outdoor recreational activities, including hunting animals or birds and fishing on lakes, reservoirs, rivers, and streams. An outfitter may act as a guide. The term does not include a person holding title or an equitable interest in business operations if the purpose of the business operation is to provide food or lodging to the general public, chamber of commerce activities, travel agencies, or others that offer free information to attract outdoor and recreational use of their communities.

35-36. "Owner" means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

36-37. "Passenger" means every person carried on board a vessel other than:

- a. The owner or the owner's representative.
- b. The operator.
- c. Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services.

- d. Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for that person's carriage.
- 37-38. "Person" includes every partnership, association, corporation, and limited liability company. No violation of this title may be excused because it was done as the agent or employee of another, nor because it was committed by or through an agent or employee of the person charged.
- 38-39. "Personal watercraft" means a motorboat that is powered by an inboard motor powering a water jet pump or by an inboard or outboard marine engine and which is designed to be operated by a person sitting, standing, or kneeling on the craft, rather than in a conventional manner of sitting or standing inside a motorboat.
- 39-40. "Possession" means control, actual possession, and constructive possession of the article or thing specified.
- 40-41. "Private fish hatchery" means a body of water, whether natural or artificial, and any other facilities used, maintained, or operated by any private person, firm, corporation, or limited liability company for the propagation and production of fish for sale or planting in other waters. Except in the case of trout, walleye, northern pike, and crappie, which may be raised in a private fish hatchery without the director's approval, the director may, by rule, regulate the species of fish which may be raised in a private fish hatchery. No waters stocked by any state or federal governmental agency may be considered a private fish hatchery.
- 41-42. "Public waters" means waters to which the general public has a right to access.
- 42-43. "Resident" means any person who has actually lived within this state or maintained that person's residence therein for at least six months immediately preceding the date that residence is to be determined. A person's residence is the place where the person remains when not called elsewhere for special or temporary purposes. A resident can only have one residence and a residence cannot be lost until another is gained. A residence or home is a permanent building or part of a building and may include a house, condominium, apartment, room in a house, or mobile home. A rental property, vacant lot, or house, cabin, or premises used primarily for business or recreational pursuits may not be considered a residence. A "nonresident" is any person who has not actually lived within this state or maintained that person's residence within this state for at least six months immediately preceding the date that residence is to be determined.
- 43-44. "Resident species" means any species nearly all of whose individuals in this state are located within this state for at least three-fourths of annual cycle of the species.
- 44-45. "Retrieve" means to have taken possession and made ready for transportation.
- 45-46. "Sell" and "sale" means any sale or offer to sell, or possession with intent to sell, use, or dispose of, the article or thing specified, contrary to law.

- 46-47. "Shooting preserve" or "preserve" means any privately owned or leased acreage [hectarage] on which hatchery-raised game birds are released to be hunted for a fee over an extended season.
- 47-48. "Sinkbox" or "sunken device" means a raft or any type of low floating device having a depression that affords a hunter a means of concealing that person below the surface of the water.
- 48-49. "Slow or no wake speed" means the slowest possible speed necessary to maintain steerage.
- 49-50. "Small game" includes all game birds and tree squirrels.
- 50-51. "Species" includes any subspecies of wildlife and any other group of wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature.
- 51-52. "Threatened species" means any species which is likely to become an endangered species within the foreseeable future and includes any species classified as threatened pursuant to the Endangered Species Act of 1973, Public Law 93-205.
- 52-53. "Transport" means to cause or attempt to cause a species to be carried or moved into or within the state and includes accepting or receiving the species for transportation or shipment. The term does not include the unintentional transport of a species while on a specific water of the state or to a connected water of the state where the species being transported is already present.
- 53-54. "Undocumented vessel" means a vessel which does not have a valid marine document as a vessel of the United States.
- 54-55. "Vessel" means any watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.
- 55-56. "Waterfowl" includes all varieties of geese, brant, swans, ducks, rails, and coots.
- 56-57. "Waters" when not qualified means waters not open to the general public.
- 57-58. "Waters of the state" means all waters of this state, including boundary waters. This title extends to and is in force and effect over, upon, and in all such waters.
- 58-59. "Wildlife" means any member of the animal kingdom including any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof. Wildlife does not include domestic animals as defined by section 36-01-00.1 or birds or animals held in private ownership.

**SECTION 2. AMENDMENT.** Section 20.1-05-04 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-05-04. Using certain animals and artificial lights in taking big game unlawful.**

1. While hunting, pursuing, killing, taking, or attempting to take, or to aid in the hunting or taking of, any big game animal, an individual may not:
  - a. Use any animal except:
    - (1) Horses;
    - (2) Mules; or
    - (3) For the recovery of big game animals, dogs which must be:
      - (a) ~~The dog must be leashed~~Leashed and under the physical control of a handler at all times; and
      - (b) ~~The dog must be accompanied~~Accompanied at all times by both a handler and the hunter responsible for the taking of the big game animal;
      - (c) ~~Individuals involved in the recovery of the big game animal may not carry.~~
  - b. Carry a firearm or archery equipment while using a dog during the recovery; of a big game animal, except a dog handler may carry a handgun during the recovery of a big game animal when in the presence of the dog. A dog handler carrying a handgun may not use the handgun in any manner to assist in the recovery of a big game animal. A dog handler carrying a handgun must have permission from the landowner or individual authorized by the landowner before entering private land for the recovery of a big game animal.
    - (d) If a big game animal is found alive during the recovery, the dog and handler shall leave the immediate area; ~~and~~
    - (e). Before the beginning of the recovery, the handler of the dog shall notify the district game warden of the involvement of the dog in the recovery of the big game animal and provide to the district game warden the contact information of all parties involved in the hunt and the location in which the big game animal was tracked.
  - b-c. Use artificial light, including a spotlight or automobile or motorcycle headlight, except artificial light may be used in the recovery process of big game animals.
  - e-d. Engage in the practice commonly known as shining for deer. An individual who shines an area commonly frequented by big game animals with artificial light, between the hours of sunset and sunrise, is in violation of this section. However, an individual may use an artificial light, night vision, thermal vision, or infrared light with a power source of not more than six volts in the area while hunting afoot to take coyote, fox, raccoon, or beaver.
2. For purposes of this section, "recovery" means the time after a firearm or archery equipment is used in the taking of a big game animal until the expired animal is located.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 219

### HOUSE BILL NO. 1538

(Representative Porter)

AN ACT to create and enact a new section to chapter 20.1-02 and a new section to chapter 20.1-03 of the North Dakota Century Code, relating to fishing contests, surcharge fees, and the fishing conservation fund; to amend and reenact subsection 20 of section 20.1-02-05 of the North Dakota Century Code, relating to the powers of the director of the game and fish department; to provide a continuing appropriation; and to provide an effective date.

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

<sup>125</sup> **SECTION 1. AMENDMENT.** Subsection 20 of section 20.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

20. ~~Adopt rules and issue~~ Issue permits for conducting fishing contests involving public waters of the state in accordance with section 2 of this Act. The director by rule shall define the term "fishing contest" and shall set criteria for which a fishing contest permit is required. The director may deny permits. ~~No~~ A person may ~~not~~ conduct a fishing contest on public waters without first receiving a permit issued by the director.

**SECTION 2.** A new section to chapter 20.1-02 of the North Dakota Century Code is created and enacted as follows:

#### **Fishing contests.**

1. A "fishing contest" means an event at which a prize or cash is given to a contestant for catching fish from waters open to the public. The term includes high-value tag contests, fishing tournaments, biggest fish contests, contests providing a prize for the largest number or weight of fish, and fishing leagues and tournaments comprised of multiple fishing events which have a cumulative fee of fifty dollars or more per event. The term does not include:
  - a. A fishing event with fewer than fifty participants or fewer than fifteen boats for which an entry or participation fee of less than fifty dollars is charged.
  - b. An individual big fish promotion for which an entry or participation fee is not charged.
  - c. An organized youth fishing event if participants are under the age of nineteen or enrolled in a high school.
  - d. An online contest not held on a single body of water.

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<sup>125</sup> Section 20.1-02-05 was also amended by section 1 of House Bill No. 1134, chapter 220, section 1 of House Bill No. 1260, chapter 221, and section 1 of Senate Bill No. 2297, chapter 222.

2. A fishing contest may not include a conservation fee if the fishing contest is held by a nonprofit veterans organization, charitable organization, educational organization, religious organization, fraternal organization, civic and service organization, or public-spirited organization, as those organizations are defined in chapter 53-06.1. A membership fee for a club or organization may not be classified as an entry fee or proceeds.
3. An organization desiring to hold a fishing contest shall submit an application to the director at least thirty days before the start of the contest. The application must list the recipient of the conservation fee and include a seventy-five dollar application fee. A conservation fee must be negotiated between the organization desiring to hold the fishing contest and a representative of the fishing league or fishing tournament.
4. The director may deny or revoke a permit if:
  - a. The director believes the fishing contest does not or will not comply with the rules of the department or could be harmful to the fishing resource;
  - b. An agency with jurisdiction deems the public use facilities such as a boat ramp, parking area, campground, or related facilities are inadequate to support the contest; or
  - c. The committee or sponsors have failed to submit timely reports.
5. A permittee shall submit a report to the director within thirty days after completion of the fishing contest. The report must include the number of contest participants, the quantity and species of fish taken in the contest, and the total amount and recipient of the conservation fee. Failure to submit this report is justification for denial of future fishing contest permits.
6. The director may adopt rules to administer this section.

**SECTION 3.** A new section to chapter 20.1-03 of the North Dakota Century Code is created and enacted as follows:

**Nonresident license surcharge - Fishing conservation fund - Continuing appropriation.**

1. Notwithstanding any other provision of law, the director shall establish a surcharge of five dollars on each nonresident fishing license issued under section 20.1-03-12. The collected surcharge fees must be deposited with the state treasurer and credited to the fishing conservation fund.
2. There is created in the state treasury a special fund known as the fishing conservation fund. The fund consists of all money deposited in the fund pursuant to this section. All money deposited in the fund is appropriated as a continuing appropriation to the game and fish department for the purpose of fishery conservation, public access projects, and grant programs relating to fish and wildlife conservation. The game and fish department may adopt rules in accordance with chapter 28-32 for the purpose of administering the fishing conservation fund.

**SECTION 4. EFFECTIVE DATE.** This Act becomes effective on April 1, 2024.

Approved May 5, 2023

Filed May 9, 2023

## CHAPTER 220

### HOUSE BILL NO. 1134

(Representatives Vetter, Brandenburg, Cory, Dockter, Rohr, M. Ruby, Schauer,  
Steiner)  
(Senators Burckhard, Magrum, Meyer, Paulson)

AN ACT to amend and reenact subdivision c of subsection 12 of section 20.1-02-05 of the North Dakota Century Code, relating to hunting and fishing license for national guard members.

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

<sup>126</sup> **SECTION 1. AMENDMENT.** Subdivision c of subsection 12 of section 20.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

- c. An individual who is a member of the United States armed forces and who is within the state on duty or leave or nonresident current North Dakota national guard member.

Approved March 14, 2023

Filed March 15, 2023

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<sup>126</sup> Section 20.1-02-05 was also amended by section 1 of House Bill No. 1260, chapter 221, section 1 of House Bill No. 1538, chapter 219, and section 1 of Senate Bill No. 2297, chapter 222.

## CHAPTER 221

### HOUSE BILL NO. 1260

(Representatives J. Olson, Grueneich, Kempenich, Nathe, Porter, Pyle)  
(Senators Elkin, Patten)

AN ACT to amend and reenact subsection 17 of section 20.1-02-05 and subsection 7 of section 20.1-03-11 of the North Dakota Century Code, relating to habitat development on private land and public access agreements and special antlerless elk depredation management licenses.

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

<sup>127</sup> **SECTION 1. AMENDMENT.** Subsection 17 of section 20.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

17. Carry out a private land habitat and access improvement program by:
  - a. Entering cost-sharing, habitat enhancement, and access agreements with landowners or agencies working on private land to help defray all or a portion of their share of local, state, or federally sponsored conservation practices considered beneficial to fish and wildlife.
  - b. Leasing and developing fish and wildlife habitat or sport fishing areas on private land. Except for purposes of ~~subdivisions~~subdivisions i and j, public access to leased land may not be prohibited.
  - c. Carrying out practices or designating an individual to carry out practices or authorizing or having the designee authorize landowners to carry out practices that will alleviate depredations caused by predatory animals and big game animals.
  - d. Publishing a brochure on an annual basis describing areas funded from the game and fish department private land habitat and access improvement fund which are open to public access in this state.
  - e. Receiving advice from the game and fish advisory board concerning expenditures from the game and fish department private land habitat and access improvement fund.
  - f. Working with livestock producers experiencing chronic deer depredation problems to develop site-specific deer depredation management plans.
  - g. Giving first consideration to producers impacted by deer foraging on stored winter forage when purchasing winter deer management supplies.
  - h. Making available the sum of one million dollars from each biennial game and fish department appropriation to be used to provide feeding and other

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<sup>127</sup> Section 20.1-02-05 was also amended by section 1 of House Bill No. 1134, chapter 220, section 1 of House Bill No. 1538, chapter 219, and section 1 of Senate Bill No. 2297, chapter 222.

winter management practices to alleviate depredation caused by big game animals. Any unexpended funds under this subdivision, up to two million dollars, are not subject to section 54-44.1-11 and may be carried forward for expenditure in future bienniums.

- i. Making available the sum of one hundred thousand dollars from each biennial game and fish department appropriation to be used for food plots on private property for the purpose of providing winter feed. These food plots are not subject to public access considerations.
- j. Developing agreements to compensate private landowners for the development of habitat on private property specific to the geography, form, and function necessary for addressing fish and wildlife populations.
- k. Granting authority to program managers to carry out the duties of the program including signing for, negotiating, and renewing agreements and leases.

<sup>128</sup> **SECTION 2. AMENDMENT.** Subsection 7 of section 20.1-03-11 of the North Dakota Century Code is amended and reenacted as follows:

- 7. a. A resident that is an individual, corporation, limited liability company, limited liability partnership, limited partnership, partnership, trust, or life estate, and has executed a lease for at least one hundred fifty acres [60.70 hectares] of land that the resident actively farms or ranches; or a resident that is an individual, corporation, limited liability company, limited liability partnership, limited partnership, partnership, trust, or life estate and holds title to at least one hundred fifty acres [60.70 hectares] of land, is eligible to submit one application for a license to hunt elk upon filing a signed application describing that land and payment of the fee requirement for a resident big game license. The land must be within a unit open for the hunting of elk. The license must include a legal description of the eligible land described in the completed application and may be used to hunt elk within the district or unit in which the land described in the completed application is located. Upon request, a lessee shall provide proof that the land described in the completed application is leased for agricultural purposes. If not otherwise specified in an agricultural lease, the landowner is entitled to receive the license. An individual issued a license under this subsection must be a resident.
- b. If the eligible applicant is a corporation, limited liability company, limited liability partnership, limited partnership, partnership, trust, or life estate, only one license may be issued, and the license must be issued in the name of an individual shareholder, member, partner, beneficiary, or holder of a life estate.
- c. A resident who is eligible for a license under this subsection may transfer that eligibility for the license to a spouse or legal dependent residing customarily with the resident, but no more than one license may be issued under this subsection for any qualifying land.
- d. The governor's proclamation may restrict the districts or units for which preferential licenses may be issued under this subsection. The number of

<sup>128</sup> Section 20.1-03-11 was also amended by section 1 of House Bill No. 1233, chapter 224.

licenses issued under this subsection for each designated district or unit for hunting elk may not exceed fifteen percent of the total licenses prescribed in the governor's proclamation for each district or unit. If the number of applications for licenses to be issued under this subsection in a district or unit exceeds the maximum number of licenses allocated to that district or unit, the licenses to be issued must be issued by weighted lottery as prescribed in the governor's proclamation. Licenses to hunt elk may not be issued under this subsection when the total number of licenses prescribed in the governor's proclamation is fewer than twenty.

- e. The director may issue special elk depredation management licenses to landowners in designated areas around Theodore Roosevelt national park upon payment of the fee requirement for a resident big game license. The provisions of this section governing the number of licenses issued for each designated district or unit for hunting elk do not apply to special elk depredation management licenses and a person who receives such a license under this subsection is eligible to apply for a license to hunt elk in future years and is eligible to participate in the raffle under section 20.1-08-04.6.
- f. The director may issue special antlerless elk depredation management licenses to landowners in the area and manner designated by the director upon payment of the fee required for a resident big game license. To be eligible for this license a landowner cannot charge a fee for elk hunting and must allow reasonable public access as determined by the director. The provisions of this section governing the number of licenses issued for each designated district or unit for hunting elk do not apply to special antlerless elk depredation management licenses. A person receiving an elk depredation management license under this subsection is eligible to apply for a license to hunt elk in future years and is eligible to participate in raffles under chapter 20.1-05.1.
- g. An individual who has been convicted of illegally taking a moose, elk, or bighorn sheep is not eligible to apply for or receive a license under this subsection.

Approved April 6, 2023

Filed April 10, 2023

## CHAPTER 222

### SENATE BILL NO. 2297

(Senators Kannianen, Beard)  
(Representatives D. Anderson, J. Olson)

AN ACT to amend and reenact subsection 25 of section 20.1-02-05 of the North Dakota Century Code, relating to a lifetime combination license; and to declare an emergency.

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

<sup>129</sup> **SECTION 1. AMENDMENT.** Subsection 25 of section 20.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

25. ~~Issue, as a means of rewarding dedication to teaching firearm hunter safety, complimentary lifetime resident certificates and combination licenses provided under section 20.1-03-11.1 to resident certified hunter education volunteer instructors. Eligible persons must have served as a lead or assistant certified hunter education volunteer instructor in this state for a minimum of one course in each of thirty years. The license is known as the "lifetime combination license" and must be signed by the director and the person receiving the license. The~~ dedication of certified game and fish department volunteer instructors:
- a. A complimentary resident certificate and combination license to resident instructors, provided under section 20.1-03-11.1; or
- b. A complimentary composite of nonresident licenses to include a certificate, fishing license, general game and habitat license, small game license, statewide waterfowl license, spring white goose license, furbearer and nongame license, and a reciprocal trapping license to nonresident instructors.

Any license issued under this subsection is valid for the lifetime of the instructor. An individual is eligible for a license under this subsection if the individual has served and maintained an active status as a certified volunteer instructor in the state for thirty years. Any license issued under this subsection must be revoked by the director if the licenseholder is convicted of a felony or found to have violated any provision of this title.

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

Approved April 11, 2023

Filed April 12, 2023

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<sup>129</sup> Section 20.1-02-05 was also amended by section 1 of House Bill No. 1134, chapter 220, section 1 of House Bill No. 1260, chapter 221, and section 1 of House Bill No. 1538, chapter 219.

## CHAPTER 223

### HOUSE BILL NO. 1409

(Representatives D. Anderson, Nelson, Novak, O'Brien)  
(Senator Kannianen)

AN ACT to amend and reenact section 20.1-03-07.2 of the North Dakota Century Code, relating to nonresident youth hunting licenses for small game and waterfowl.

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

**SECTION 1. AMENDMENT.** Section 20.1-03-07.2 of the North Dakota Century Code is amended and reenacted as follows:

#### **20.1-03-07.2. Nonresident youth hunting licenses.**

A nonresident youth who is less than sixteen years of age may purchase a ~~resident small~~general game hunting license and may hunt small game and waterfowl except swans and wild turkeys; ~~provided, that the nonresident youth's state, or province or territory of Canada, of residence provides a reciprocal licensing agreement for North Dakota residents who are less than sixteen years of age.~~ To be eligible to purchase a license under this section, a nonresident youth ~~may not have arrived at the age of sixteen before September first of the year for which the license is issued and~~ must possess a certificate of completion for a certified hunter education course. The nonresident youth may ~~only~~ hunt only under the supervision of an adult family member or legal guardian ~~who is licensed to hunt small game or waterfowl in this state and is subject to.~~ A nonresident youth may hunt during the entire youth and the same regulations as that youth's adult family member or legal guardian regular small game and waterfowl seasons. This section does not apply to the hunting of big game or to a license issued by lottery.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 224

### HOUSE BILL NO. 1233

(Representatives Mock, Hagert, Heinert, Ista, Novak, Porter, Roers Jones, M. Ruby)  
(Senators Magrum, Patten)

AN ACT to amend and reenact subsection 1 of section 20.1-03-11 of the North Dakota Century Code, relating to youth white-tailed antlerless deer permits.

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

<sup>130</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. 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 must be issued as an integral part of the big game hunting license. Except as otherwise provided in this subsection, an individual may not apply for or be issued a big game hunting license unless that individual's fourteenth or subsequent birthday occurs in the same year as 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 is a distinct and separate offense. The following provisions govern youth deer and antelope hunting:
  - a. An individual whose eleventh, twelfth, or thirteenth birthday occurs in the same year as a youth deer hunting season is entitled to receive a statewide white-tailed antlerless deer permit ~~but may hunt only in that youth deer hunting season.~~
  - b. An individual whose twelfth or thirteenth birthday occurs in the same year as an antelope hunting season is entitled to apply for an antelope permit for that season.
  - c. An individual hunting under subdivision a or b 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.

Approved March 22, 2023

Filed March 23, 2023

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<sup>130</sup> Section 20.1-03-11 was also amended by section 2 of House Bill No. 1260, chapter 221.

## CHAPTER 225

### SENATE BILL NO. 2382

(Senator Larsen)  
(Representative Porter)

AN ACT to amend and reenact section 20.1-13-06 of the North Dakota Century Code, relating to motorboat numbering exemptions.

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

**SECTION 1. AMENDMENT.** Section 20.1-13-06 of the North Dakota Century Code is amended and reenacted as follows:

#### **20.1-13-06. Exemption from numbering provisions of this chapter.**

A motorboat may not be required to be numbered under this chapter if it is:

1. Already covered by a number, in full force and effect, awarded it pursuant to federal law or a federally approved numbering system of another state, provided such motorboat has not been within this state for more than ninety consecutive days.
2. A motorboat from a foreign country temporarily using the waters of this state.
3. A motorboat owned by the United States, a state, or a subdivision thereof.
4. A ship's lifeboat.
5. ~~A motorboat belonging to a class of boats exempted from numbering by the department after said agency has found that the numbering of motorboats of such class will not materially aid in their identification; and, if an agency of the federal government has a numbering system applicable to the class of motorboats to which the motorboat in question belongs, after the department has further found that the motorboat would also be exempt from numbering if it were subject to the federal law.~~

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 226

### HOUSE BILL NO. 1366

(Representatives Nelson, Bahl, Mock, M. Ruby)  
(Senator Weston)

AN ACT to amend and reenact section 20.1-13-10 of the North Dakota Century Code, relating to the wearing of a life preserver while barefoot skiing or surfing; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 20.1-13-10 of the North Dakota Century Code is amended and reenacted as follows:

#### **20.1-13-10. Water skis and, surfboard, and barefoot skiing - Penalty.**

1. An individual may not engage in barefoot skiing or manipulate any water skis, surfboard, or similar device without wearing a life preserver approved by the department, unless the individual is ~~sixteen~~:
  - a. Sixteen years of age or older and engaged in windsurfing or boardsailing;  
or
  - b. Engaging or attempting to engage in barefoot skiing or surfing and the individual is wearing a wet suit specifically designed for barefoot skiing or surfing which is in good and serviceable condition and of appropriate size.
2. An individual engaging or attempting to engage in barefoot skiing or surfing under subdivision b of subsection 1, must have on board the towing vessel a life preserver approved by the department.
3. Any time between one hour after sunset to one hour before sunrise, an individual may not operate a vessel on any waters of this state towing an individual engaged in barefoot skiing or on water skis, a surfboard, or similar device, nor engage in barefoot skiing, water skiing, surfboarding, or similar activity.
- ~~3-4.~~ Subsections 1 and ~~23~~ do not apply to a performer engaged in a professional exhibition or an individual engaged in an activity authorized under section 20.1-13-11.
- ~~4-5.~~ An individual may not operate or manipulate any vessel, towrope, or other device by which the direction or location of water skis, a surfboard, or similar device may be affected or controlled in a way as to cause the water skis, surfboard, or similar device, or an individual on the device or engaged in barefoot skiing, to collide with or strike against any object or individual.
- ~~5-6.~~ An individual may not operate a vessel on any waters of this state towing an individual engaged in barefoot skiing or on water skis, a surfboard, or similar device unless there is another individual in the towing vessel observing any individual being towed or the vessel is equipped with a mirror at least

seventy-eight square inches [198.12 square centimeters] which provides the operator an unobstructed field of vision to the rear. This subsection does not apply to a personal watercraft or to members of any organization regularly staging water ski shows, tournaments, or exhibitions while engaged in the performance of such shows, tournaments, or exhibitions. The department shall adopt rules to allow such organizations to practice in preparation for such events, as prescribed in section 20.1-13-11.

6-7. An individual who violates this section is guilty of a class 2 noncriminal offense.

Approved March 17, 2023

Filed March 17, 2023

# GOVERNMENTAL FINANCE

## CHAPTER 227

### HOUSE BILL NO. 1088

(Government and Veterans Affairs Committee)  
(At the request of the State Investment Board)

AN ACT to amend and reenact subsection 1 of section 21-10-01 and subsection 4 of section 21-10-11 of the North Dakota Century Code, relating to membership of the state investment board and the legacy and budget stabilization fund advisory board; to provide an effective date; and to declare an emergency.

#### 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:
  - a. The governor;
  - b. The state treasurer;
  - c. The commissioner of university and school lands;
  - d. The director of workforce safety and insurance;
  - e. ~~The insurance commissioner~~director of the office of management and budget;
  - f. ~~Three~~Two 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;
  - g. ~~Two of the elected~~ members of the public employees retirement system board as selected by that board;
  - h. ~~One member of the public employees retirement system board as selected by that board~~Two members, each of whom by experience is familiar with institutional investments, appointed by the governor. One initial appointee shall serve a term of three years, one initial appointee shall serve a term of five years, and all subsequent appointees shall serve five-year terms; and
  - i. ~~One member of~~Two members, one from the senate and one from the house of representatives, or the member's designee, who serve on the legacy and budget stabilization fund advisory board, as selected by that board, ~~to serve as a nonvoting member~~to represent that board.

<sup>131</sup> **SECTION 2. AMENDMENT.** Subsection 4 of section 21-10-11 of the North Dakota Century Code is amended and reenacted as follows:

4. The board consists of three members of the senate appointed by the senate majority leader, three members of the house of representatives appointed by the house majority leader, the president of the Bank of North Dakota or designee, the tax commissioner or designee, the ~~insurance commissioner~~ director of the office of management and budget or designee, and the state treasurer or designee. The board shall select a member from the senate or house of representatives to serve as chairman for no more than one consecutive year and must meet at the call of the chairman.

**SECTION 3. EFFECTIVE DATE.** This Act becomes effective July 1, 2023.

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

Approved May 8, 2023

Filed May 9, 2023

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<sup>131</sup> Section 21-10-11 was also amended by section 2 of Senate Bill No. 2330, chapter 96.

# HEALTH AND SAFETY

## CHAPTER 228

### HOUSE BILL NO. 1294

(Representatives Weisz, Beltz, Fegley, Nelson, Rohr, M. Ruby)  
(Senators Klein, Lee)

AN ACT to provide an exemption; and to provide for the distribution of state financial assistance to eligible ambulance service operations.

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

**SECTION 1. EXEMPTION - AMBULANCE SERVICE OPERATION FUNDING DISTRIBUTION.** Notwithstanding section 23-46-04 relating to state financial assistance for emergency medical services, during the biennium beginning July 1, 2023, and ending June 30, 2025, the department of health and human services, in consultation with the emergency medical services advisory council, shall provide state financial assistance to each eligible ambulance service operation pursuant to the following calculation:

1. The minimum reasonable budget for each operation must be determined by adding the product of the operation's average number of runs for the two most recent calendar years multiplied by the cost of a run. The cost of a run for this biennium is one thousand seven hundred fifty dollars. If the average runs multiplied by the cost of a run equals less than one hundred twenty-five thousand dollars, the minimum reasonable budget for that ambulance service is one hundred twenty-five thousand dollars.
2. The operation's grant amount must be determined by deducting the following amounts from the operation's budget calculated under subsection 1:
  - a. The product of the operation's average number of runs for the two most recent calendar years multiplied by the reimbursement for a run. The reimbursement for a run is seven hundred fifty dollars; and
  - b. The product of the property tax valuation of the operation's response area for the most recent taxable year multiplied by five mills. The property tax valuation of the operation's response area must be provided by the county auditor annually no later than July thirty-first. If the response area covers multiple counties, the county auditor with the most response area is responsible for coordinating with the other county auditors.
3. The maximum total grant calculation for each operation, after accounting for the deductions in subsection 2, may not exceed two hundred twenty-five thousand dollars.
4. The department shall distribute a prorated share of the operation's calculated grant amount if legislative appropriations for state financial assistance for

emergency medical services is not sufficient to provide full grant funding calculated under this section.

5. An operation is not eligible to receive funding under this section if the operation's average number of runs for the two most recent fiscal years is more than seven hundred.
6. A response area acquired after April 1, 2022, due to an adjacent ambulance service closure is not calculated in the operations response area for the purpose of the grant calculation.

Approved April 10, 2023

Filed April 11, 2023

## CHAPTER 229

### HOUSE BILL NO. 1165

(Representative M. Ruby)

AN ACT to create and enact three new sections to chapter 23-01 of the North Dakota Century Code, relating to powers and duties of the department of health and human services public health division, central public health laboratory, and surge staffing; to amend and reenact subdivision p of subsection 1 of section 11-16-01, section 14-13-03, subsection 2 of section 15-52-03, section 16.1-02-06, subsection 2 of section 19-24.1-38, sections 23-01-03.1, 23-01-03.3, 23-01-04.3, 23-01-05, and 23-01-05.1, subsection 3 of section 23-01-05.3, sections 23-01-05.4, 23-01-08, 23-01-08.1, and 23-01-12, subsection 3 of section 23-01-44, sections 23-01.2-01, 23-01.2-03, and 23-01.2-04, subsection 8 of section 23-01.3-01, subsection 1 of section 23-01.3-06, section 23-01.3-08, subsections 8, 17, and 21 of section 23-02.1-01, sections 23-02.1-02 and 23-02.1-03, subsection 4 of section 23-07-02.3, sections 23-07-15, 23-07.2-01, and 23-09.4-08, subsection 4 of section 23-10-03, section 23-10-06, subsection 2 of section 23-10-06.1, sections 23-10-12, 23-16-05, 23-16-06, 23-16-10, 23-16-11, 23-17-08, 23-17.6-01, 23-17.6-02, 23-17.6-04, 23-17.6-06, 23-17.7-03, 23-23-03, 23-24-01, 23-24-02, 23-24-02.1, 23-24-06, 23-27-03, and 23-27-04.7, subsection 3 of section 23-27-04.9, sections 23-35.1-02, 23-35.1-03, and 23-36-08, subsection 1 of section 23-38.1-02, section 23-43-01, subsection 3 of section 23-43-05, section 23-46-02, subsection 1 of section 23-47-03, subsection 7 of section 25-01-01, subsection 1 of section 25-01-01.1, subsection 3 of section 25-02-01.1, sections 25-03.1-34.1, 25-03.3-01, 25-03.3-12, 25-03.3-13, 25-03.3-14, 25-03.3-17, 25-03.3-18, 25-03.3-18.1, 25-03.3-24, 25-04-08.1, and 25-11-02, subsection 2 of section 37-17.4-01, sections 43-10-02, 43-12.3-01, 43-12.3-02, 43-12.3-03, 43-12.3-04, 43-12.3-05, 43-12.3-06, and 43-12.3-07, subsection 14 of section 43-15-10, sections 43-28.1-01, 43-28.1-03, 43-28.1-05, 43-28.1-07, 43-28.1-08, 43-28.1-09, 43-29.1-01, and 43-29.1-02, subsection 1 of section 43-29.1-03, sections 43-29.1-04, 43-29.1-05, and 43-29.1-06, subsection 5 of section 43-29.1-07, section 43-29.1-08, 43-34-02, 43-38-01, 43-38-02, and 43-38-03, subsection 1 of section 43-43-01, sections 43-43-03 and 43-43-05, subsection 10 of section 50-01.1-06, sections 50-06-01.1, 50-06-01.3, and 50-06-01.4, subsection 3 of section 50-06-05.3, sections 50-06-05.5, 50-06-05.8, 50-06-06.6, 50-06-30, 50-06-31, and 50-06-32, subsection 1 of section 50-06-43.2, subsection 4 of section 50-06.1-01, subsection 7 of section 50-10.1-03, subsection 1 of section 50-11.1-25, sections 50-21-02, 50-21-04, and 50-24.6-02, subsection 3 of section 50-25.1-04.1, subsection 1 of section 50-28-04, subsection 1 of section 50-28-05, subsection 2 of section 50-35-01, section 54-44.3-31, subsection 1 of section 54-07-01.2, section 54-46-13, subsection 1 of section 54-59-25, and sections 54-59-33 and 57-60-03 of the North Dakota Century Code, relating to the powers and duties of the department of health and human services, state health officer, state health council and the executive director of the department of health and human services; and to repeal sections 23-01-01, 23-01-06, and 23-07-07 of the North Dakota Century Code, relating to the health division, a biennial report, and reporting sexually transmitted diseases.

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

**SECTION 1. AMENDMENT.** Subdivision p of subsection 1 of section 11-16-01 of the North Dakota Century Code is amended and reenacted as follows:

- p. Institute and defend proceedings under sections 14-09-12 and 14-09-19 and chapters 14-15, 27-20.1, 27-20.2, 27-20.3, 27-20.4, and 50-01 upon consultation with the human service zone director or the ~~executive director~~commissioner of the department of health and human services or designee.

**SECTION 2. AMENDMENT.** Section 14-13-03 of the North Dakota Century Code is amended and reenacted as follows:

**14-13-03. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Appropriate authority in the receiving state" as used in paragraph 1 of article V of the compact with reference to this state means the ~~executive director~~commissioner of the department of health and human services or designee.
2. "Appropriate public authorities" as used in article III of the compact with reference to this state means the department of health and human services, and the department shall receive and act with reference to notices required by article III.

**SECTION 3. AMENDMENT.** Subsection 2 of section 15-52-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The council consists of sixteen 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 management;
  - (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 management; and
  - (3) Two members of the department of health and human services, of which one member is ~~appointed by the state health officer~~ or designee;
  - b. One member selected by each of the following:
    - (1) The state board of higher education;
    - (2) The North Dakota medical association;
    - (3) The North Dakota hospital association;
    - (4) The veterans administration hospital in Fargo;
    - (5) The North Dakota center for nursing; and
    - (6) The university of North Dakota center for rural health; and

- c. Four members selected by the dean of the university of North Dakota school of medicine and health sciences, one from each of the four campuses of the school of medicine and health sciences with headquarters in Bismarck, Fargo, Grand Forks, and Minot.

**SECTION 4. AMENDMENT.** Section 16.1-02-06 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-02-06. Reporting deceased individuals and changes of names - Changes to records in the central voter file.**

1. The ~~state health officer~~department of health and human services 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 who has died while maintaining residence in this state since the last report. Within thirty days after receiving a report, the secretary of state shall designate each individual included in the report as "deceased" in the central voter file.
2. The ~~state health officer~~department of health and human services 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.
3. After receiving notice of death of an individual who has died outside the county, the county auditor shall designate that individual as "deceased" in the central voter file. Notice must be in the form of a printed obituary or a written statement signed by an individual having knowledge of the death of the individual.

**SECTION 5. AMENDMENT.** Subsection 2 of section 19-24.1-38 of the North Dakota Century Code is amended and reenacted as follows:

2. The chairman of the legislative management shall appoint two members of the legislative assembly to serve on the advisory board, one member from each chamber. The legislative council shall pay the compensation and expense reimbursement for the legislative members. The terms of members of the appointed advisory board are for two years and members may be reappointed by the appointing entity. The state health officer ~~or designee~~ shall serve as an ex officio voting member and as chairman of the advisory board.

**SECTION 6. AMENDMENT.** Section 23-01-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**23-01-03.1. Newborn metabolic and genetic disease screening tests.**

1. The department of health and human services shall adopt rules relating to the storage, maintenance, and disposal of blood spots or other newborn screening specimens.
2. The ~~health council~~state health officer shall specify a panel of metabolic diseases and genetic diseases for which newborn screening must be performed. The screening panel must include disorders and diseases selected by the ~~state health officer~~ with input from an advisory committee ~~that is approved by the health council~~.

**SECTION 7. AMENDMENT.** Section 23-01-03.3 of the North Dakota Century Code is amended and reenacted as follows:

**23-01-03.3. Long-term care nursing scholarship and loan repayment grant program.**

1. The ~~state health council~~department of health and human services, in cooperation with the North Dakota long term care association, shall administer the long-term care nursing scholarship and loan repayment grant program. The purpose of the program is to provide matching funds to nursing facilities for the facilities to use in recruiting and retaining nurses by providing scholarships to nursing facility staff and other individuals to obtain a nursing education and by assisting in the repayment of student loans for licensed nurses employed in a nursing facility. The department of health and human services shall adopt rules necessary to administer the program, including rules establishing criteria regarding eligibility for and distribution of program grants.
2. An applicant for a program grant shall establish that the applicant:
  - a. Is a licensed nursing facility;
  - b. Has available matching funds equal to the amount of the grant request; and
  - c. Meets the eligibility criteria established by rule.
3. An eligible applicant may receive a program grant not exceeding five thousand five hundred dollars in the first year of the biennium. Any funds appropriated by the legislative assembly for the grant program which are remaining after the first year of the biennium may be distributed to eligible applicants in the second year of the biennium in any amount determined by the ~~state health council~~department of health and human services.

**SECTION 8. AMENDMENT.** Section 23-01-04.3 of the North Dakota Century Code is amended and reenacted as follows:

**23-01-04.3. Alternative health care services pilot project - Application - Notice - Hearing - Approval - Duration.**

1. At any time that the health care needs of a city, township, or other geographic area are not being adequately met, any person may apply to the ~~state health council~~department of health and human services for approval to conduct an alternative health care services pilot project. The application must address the need for and benefits of the pilot project. It must also contain a detailed description of the nature and scope of the project, quality control, organization, accountability, responsibility, and financial feasibility.
2. Upon receipt of an application under subsection 1, the ~~state health council~~department of health and human services shall schedule a public hearing, send notice to all interested parties, and give public notice of the hearing by publication in the official newspaper of each county in the pilot project area. At the hearing, the ~~council~~department of health and human services shall accept written and oral testimony. The ~~council~~department of health and human services shall review the application and all testimony presented at the hearing and approve, disapprove, or modify and approve the application based on criteria established by the ~~council~~department of health

and human services. The criteria must address the availability and use of health personnel, facilities, and services.

3. Notwithstanding any other provisions of law, upon approval of an application submitted under subsection 1, the ~~state health council~~department of health and human services, in consultation with the state health officer and any other public or private entity consulted by the ~~state health council~~department of health and human services, shall set the standards for the delivery of health care services by the pilot project. The standards may not adversely affect the state's participation in federal Medicare and Medicaid programs. No more than three separate projects may be operational at any time and no project may be operational for longer than five years.

**SECTION 9. AMENDMENT.** Section 23-01-05 of the North Dakota Century Code is amended and reenacted as follows:

**23-01-05. Health officer - Qualifications, salary, term, duties.**

1. The governor shall appoint the state health officer who at the time of appointment must be a physician with substantive private or public administrative experience and public health experience. The state health officer is entitled to receive a salary commensurate with that individual's training and experience. The governor shall set the salary of the state health officer within the limits of legislative appropriations to the department.
2. The state health officer is entitled to receive all necessary traveling expenses incurred in the performance of official business.
3. The state health officer may not engage in any other occupation or business that may conflict with the statutory duties of the state health officer and holds office for a term of four years.
4. If the office of the state health officer is filled temporarily, the governor shall appoint at least three licensed physicians recommended by the state medical association to serve as an advisory committee to the state health officer. Each member of the advisory committee is entitled to receive reimbursement of expenses in performing official duties in amounts provided by law for other state officers. The term of the advisory committee coincides with the term of the state health officer. A committee member serves at the pleasure of the governor.
5. The duties of the state health officer are as follows:
  1. ~~Enforce all regulations as promulgated by the health council and all rules adopted by the department of health and human services.~~
  2. ~~Hold public health unit boards of health responsible for enforcement of state rules; serve~~
    - a. Provide strategy and policy advice to improve health and wellness.
    - b. Serve in an advisory capacity tofor local public health unit boards of health; and provide for coordination oflocal health activitiesofficers.
  3. ~~Establish and enforce minimum standards of performance of the work of the local department of health.~~

4. Study health problems and plan for their solution as may be necessary.
  5. Collect, tabulate, and publish vital statistics for each important political or health administrative unit of the state and for the state as a whole.
  6. c. Promote the development of local health services and recommend the allocation of health funds to local jurisdictions subject to the approval of the health council.
7. Collect and distribute health education material.
8. Maintain a central public health laboratory and where necessary, branch laboratories for the standard function of diagnostic, sanitary and chemical examinations, and production and procurement of therapeutic and biological preparations for the prevention of disease and their distribution for public health purposes.
  9. Establish a service for medical hospitals and related institutions to include licensing of such institutions according to the standards promulgated by the health council and consultation service to communities planning the construction of new hospitals and related institutions.
  10. Establish a program to provide information to the surviving family of a child whose cause of death is suspected to have been the sudden infant death syndrome.
  11. d. Issue a written order relating to a disease control measure necessary to prevent the spread of a communicable disease. A disease control measure may include a special immunization activity and decontamination measure.
    - a. (1) The state health officer shall limit a written order issued under this section to the geographical area affected by the communicable disease. The state health officer may not issue a statewide order under this section unless the governor has declared a statewide disaster or emergency under chapter 37-17.1 and the governor consents to the order. The statewide order is limited in duration to the duration of the declared disaster or emergency unless terminated earlier pursuant to chapter 37-17.1.
    - b. (2) A written order issued under this section has the same effect as a physician's standing medical order.
    - c. (3) The state health officer shall apply to the district court in a judicial district in which a communicable disease is present for an injunction canceling a public event or closing a place of business. On application of the state health officer showing the necessity of the cancellation, the court may issue an ex parte preliminary injunction, pending a full hearing.
    - d. (4) Notwithstanding any other provision of law, an order issued pursuant to this subsection may not:
      - (a) Substantially burden a person's exercise of religion unless the order is in furtherance of a compelling governmental interest and is

- the least restrictive means of furthering that compelling governmental interest;
- (2) (b) Treat religious conduct more restrictively than any secular conduct of reasonably comparable risk, unless the government demonstrates through clear and convincing scientific evidence that a particular religious activity poses an extraordinary health risk; or
  - (3) (c) Treat religious conduct more restrictively than comparable secular conduct because of alleged economic need or benefit.
- e. (5) A person claiming to be aggrieved by a violation of ~~subdivision a paragraph 1~~ may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief, including costs and reasonable attorney's fees.
- 12. ~~Make bacteriological examination of bodily secretions and excretions and of waters and foods.~~
  - 13. ~~Make preparations and examinations of pathological tissues submitted by the state health officer, by any county superintendent of public health, or by any physician who has been regularly licensed to practice in this state.~~
  - 14. ~~Make all required analyses and preparations, and furnish the results thereof, as expeditiously and promptly as possible.~~
  - 15. ~~Cause sanitary statistics to be collected and tabulated, and cause to be ascertained by research work such methods as will lead to the improvement of the sanitation of the various parts of the state.~~
  - 16. ~~From time to time, cause to be issued bulletins and reports setting forth the results of the sanitary and pathological work done in the laboratories embodying all useful and important information resulting from the work carried on in the laboratories during the year, the substance of such bulletins and reports to be incorporated in the annual report of the state health officer.~~
  - 17. ~~Establish by rule a schedule of reasonable fees that may be charged for laboratory analysis. No charge may be made for any analysis conducted in connection with any public health incident affecting an entire region, community, or neighborhood.~~
  - 18. a. ~~Establish a review process for instances in which the department is requested to conduct an epidemiological assessment of a commercial building. The epidemiological assessment must include:~~
    - (1) ~~A statement of whether there are known environmental causes;~~
    - (2) ~~If there are known environmental causes identified, a recommendation of how they can be remediated or mitigated; and~~
    - (3) ~~If there are no known environmental causes identified, a statement that no known causes exist.~~
  - b. ~~Costs for remediation, mitigation, and consultant services are the responsibility of the building owner. Proof of remediation of any identified~~

~~environmental concern related to the epidemiological assessment is the burden of the building owner~~

- e. Perform all duties required or provided by law.

**SECTION 10. AMENDMENT.** Section 23-01-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**23-01-05.1. Organ or tissue transplant assistance administration - Standing appropriation.**

The ~~executive director~~ of the department of health and human services shall select a private nonprofit patient-oriented organization incorporated in this state for the purpose of administering financial assistance to organ or tissue transplant patients who are residents of this state. The department of health and human services shall adopt rules governing administration of this section. The organization selected shall administer and provide grants from available funds to alleviate demonstrated financial needs of transplant patients for any costs associated with transplant operations, under guidelines based on current social service eligibility requirements. There is hereby created as a special fund in the state treasury an organ transplant support fund, the principal and income of which is hereby appropriated to the organization selected under this section. The organization administering the fund may solicit contributions from private or governmental sources and such contributions may be deposited in the fund.

**SECTION 11. AMENDMENT.** Subsection 3 of section 23-01-05.3 of the North Dakota Century Code is amended and reenacted as follows:

3. Notwithstanding any other provision of law, a health care provider, elementary or secondary school, early childhood facility, public or private postsecondary educational institution, city or county board of health, district health unit, and ~~the state health officer~~department of health and human services may exchange immunization data in any manner with one another. Immunization data that may be exchanged under this section is limited to the date and type of immunization administered to a patient and may be exchanged regardless of the date of the immunization.

**SECTION 12. 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 department of health and human services may employ and establish the qualifications and compensation of the state forensic examiner. The state forensic examiner must be a 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;
3. Conduct investigations into the cause of death of and perform autopsies on any deceased human body whenever requested to do so by the acting local county coroner or the local state's attorney;

4. Provide training and educational materials to local county coroners, law enforcement, and any other person the state forensic examiner deems necessary;
5. Maintain complete records of the cause, manner, and mode of death necessary for accurate health statistics and for public health purposes; and
6. Perform other duties assigned by the ~~state health officer~~commissioner of the department of health and human services.

**SECTION 13.** A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

**Powers and duties of the public health division.**

The public health division shall:

1. Enforce rules adopted by the department of health and human services.
2. Hold public health unit boards of health responsible for enforcement of state rules, serve in an advisory capacity to public health unit boards of health, and provide for coordination of health activities.
3. Establish and enforce minimum standards of performance of the work of the local department of health.
4. Study health problems and plan for their solution as may be necessary.
5. Establish a service for medical hospitals and related institutions to include licensing of the institutions according to the standards promulgated by the department and consultation service to communities planning the construction of new hospitals and related institutions.
6. Maintain a central public health laboratory and where necessary, branch laboratories.
7. Perform all duties required or provided by law.

**SECTION 14.** A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

**Powers and duties of the central public health laboratory.**

The central public health laboratory:

1. Must be maintained for the standard function of diagnostic, sanitary and chemical examinations, and production and procurement of therapeutic and biological preparations for the prevention of disease and their distribution for public health purposes.
2. Shall make bacteriological examination of bodily secretions and excretions and of waters and foods.
3. Shall make preparations and examinations of pathological tissues submitted by the state health officer, by any county superintendent of public health, or by any physician who has been regularly licensed to practice in this state.

4. Shall make all required analyses and preparations, and furnish the results thereof, as expeditiously and promptly as possible.
5. Shall cause sanitary statistics to be collected and tabulated, and cause to be ascertained by research work such methods as will lead to the improvement of the sanitation of the various parts of the state.
6. From time to time, shall cause to be issued bulletins and reports setting forth the results of the sanitary and pathological work done in the laboratories embodying all useful and important information resulting from the work carried on in the laboratories during the year.
7. Shall establish by rule a schedule of reasonable fees that may be charged for laboratory analysis. A charge may not be made for any analysis conducted in connection with a public health incident affecting an entire region, community, or neighborhood.
8. Shall establish a review process for instances in which the department of health and human services is requested to conduct an epidemiological assessment of a commercial building.
  - a. The epidemiological assessment must include:
    - (1) A statement of whether there are known environmental causes;
    - (2) If there are known environmental causes identified, a recommendation of how the causes can be remediated or mitigated; and
    - (3) If there are no known environmental causes identified, a statement that no known causes exist.
  - b. Costs for remediation, mitigation, and consultant services are the responsibility of the building owner. Proof of remediation of any identified environmental concern related to the epidemiological assessment is the burden of the building owner.

**SECTION 15.** A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

**Surge staffing.**

The department of health and human services may employ staff to deploy to local hospitals, basic care facilities, long-term care facilities, and other health care settings to cover staff shortages. The hospital or facility must be responsible for insuring the staff members while the staff work at the hospital or facility. For indemnification and liability purposes, the staff member must be considered an employee of the hospital or facility during deployment at the hospital or facility. The department of health and human services may adopt rules to effectuate this section.

**SECTION 16. AMENDMENT.** Section 23-01-08 of the North Dakota Century Code is amended and reenacted as follows:

**23-01-08. Directors of divisions - Deputy - Appointment, salary, duties.**

The executive director/commissioner of the department of health and human services or designee shall appoint directors of the various divisions of the department

and shall determine the salary, within the limits of legislative appropriations to the department and in conformity with the state merit system, to be received by such persons. The duties of such director must be those prescribed by the ~~executive director~~commissioner of the department of health and human services or designee. The ~~executive director of the department of health and human services or designee~~state health officer may appoint a deputy state health officer. A deputy state health officer who does not hold a health-related degree may not individually issue an order regarding public health unless the order is cosigned by a physician who is employed by the department or cosigned by the state epidemiologist. The deputy state health officer serves at the pleasure of the ~~executive director of the department of health and human services~~state health officer.

<sup>132</sup> **SECTION 17. AMENDMENT.** Section 23-01-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**23-01-08.1. Criminal history background checks.**

The department of health and human services may require a final applicant for a job opening or a current employee with the department, as designated by the ~~state health officer~~commissioner of the department of health and human services, complete a state and national criminal history record check as provided under section 12-60-24.

**SECTION 18. AMENDMENT.** Section 23-01-12 of the North Dakota Century Code is amended and reenacted as follows:

**23-01-12. Hospital records to be kept at direction of state health officer**~~department~~.

When any person is admitted into a lying-in hospital or other institution, public or private, to which persons resort for the treatment of disease or for confinement, or to which persons are committed by process of law, the superintendent, manager, or other person in charge of such institution shall make a record of all the personal and statistical particulars relative to such person. The record must be in such form as is directed by the ~~state health officer~~department of health and human services. In the case of any person admitted or committed for medical treatment of disease, the physician in charge shall specify for entry in the records the nature of the disease and where, in the physician's opinion, it was contracted. The personal particulars and information required for compliance with the provisions of this section must be obtained from the individual personally if practicable, and when the information cannot be obtained from the individual, from the individual's relatives or friends or from any other person acquainted with the facts.

**SECTION 19. AMENDMENT.** Subsection 3 of section 23-01-44 of the North Dakota Century Code is amended and reenacted as follows:

3. The department of health and human services may authorize a qualified entity to operate a program in a county if:
  - a. The area to be served is at risk of an increase or potential increase in prevalence of viral hepatitis or human immunodeficiency virus;
  - b. A syringe exchange program is medically appropriate as part of a comprehensive public health response; and

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<sup>132</sup> Section 23-01-08.1 was also amended by section 3 of Senate Bill No. 2102, chapter 214.

- c. The qualified entity conducted a public hearing and submitted a report of the findings and an administration plan for the program to the ~~state health officer~~department of health and human services.

**SECTION 20. AMENDMENT.** Section 23-01.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**23-01.2-01. Trauma system established –~~Duties of health council.~~**

The ~~health council, in conjunction with the~~ department of health and human services, may establish and maintain a comprehensive trauma system for the state. The trauma system may include standards for the following components:

1. A system plan.
2. Prehospital emergency medical services.
3. Hospitals, for which the standards must include:
  - a. Standards for designation, redesignation, and dedesignation of trauma centers.
  - b. Standards for evaluation and quality improvement programs for designated trauma centers. The standards must require each trauma center to collect quality improvement data and to provide specified portions to the department for use in state and regional trauma quality improvement programs.
  - c. Qualifications for trauma center personnel.
4. A trauma registry. Data in the trauma registry is not subject to subpoena or discovery or introduction into evidence in any civil action. Designated trauma centers must participate in the trauma registry. A hospital not designated as a trauma center must provide to the registry a minimum set of data elements for all trauma patients ~~as determined by the health council~~.
5. A trauma quality improvement program to monitor the performance of the trauma system. The proceedings and records of the program are not subject to subpoena or discovery or introduction into evidence in any civil action arising out of any matter that is the subject of consideration by the program.

**SECTION 21. AMENDMENT.** Section 23-01.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**23-01.2-03. 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 department of health and human services 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~~department of health and human services shall allow a reasonable amount of time, determined by the department, for a hospital to fully meet all trauma designation standards.

**SECTION 22. AMENDMENT.** Section 23-01.2-04 of the North Dakota Century Code is amended and reenacted as follows:

**23-01.2-04. Medical director.**

The ~~executive director~~commissioner of the department of health and human services or designee shall appoint an emergency medical services and trauma medical director to provide medical oversight and consultation in the development and administration of the state emergency medical services and trauma systems. The medical director must be a physician licensed in the state and must be contracted and paid by the department of health and human services.

**SECTION 23. AMENDMENT.** Subsection 8 of section 23-01.3-01 of the North Dakota Century Code is amended and reenacted as follows:

8. "Public health authority" means the department of health and human services' public health division, department of environmental quality, a local public health unit, and any authority or instrumentality of the United States, a tribal government, a state, or a political subdivision of a state, a foreign nation, or a political subdivision of a foreign nation, which is:
  - a. Primarily responsible for public health matters; and
  - b. Primarily engaged in activities such as injury reporting, public health surveillance, and public health investigation or intervention.

**SECTION 24. AMENDMENT.** Subsection 1 of section 23-01.3-06 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding any other law, a public health authority, or the agent of any such entity, may disclose protected health information to a law enforcement authority if the ~~state health officer~~department of health and human services determines that:
  - a. The protected health information is necessary to a legitimate law enforcement inquiry that has begun or may be initiated into a particular violation of a criminal law or public health law being conducted by the authority; and
  - b. The investigative or evidentiary needs of the law enforcement authority cannot be satisfied by nonidentifiable health information or by any other information.

**SECTION 25. AMENDMENT.** Section 23-01.3-08 of the North Dakota Century Code is amended and reenacted as follows:

**23-01.3-08. Status of information in possession of a local public health authority.**

Any protected health information that is created or received by a local public health authority, and that is submitted or is required to be submitted to the department of health and human services' public health division, is confidential and subject to the protection of, and may be disclosed only as authorized by, this chapter.

<sup>133</sup> **SECTION 26. AMENDMENT.** Subsections 8, 17, and 21 of section 23-02.1-01 of the North Dakota Century Code are amended and reenacted as follows:

8. "Filing" means the presentation of a record, report, or other information provided for in this chapter of a birth, death, fetal death, adoption, marriage, divorce, or other event as specified by the ~~state health officer~~department of health and human services for registration by the state registrar.
17. "Registration" means the acceptance by the state registrar and incorporation into official records, reports, or other records provided for in this chapter, of birth, death, fetal death, marriage, divorce, or other records as may be determined by the ~~state health officer~~department of health and human services.
21. "System of vital records registration" includes the registration, collection, preservation, amendment, and certification of birth, death, fetal death, marriage, divorce, or other records as may be determined necessary by the ~~state health officer or the state health officer's designee~~department of health and human services.

**SECTION 27. AMENDMENT.** Section 23-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-02. Office of statistical services.**

There is hereby established in the department of health and human services an office of statistical services, which shall install, maintain, and operate a system of health statistics tabulation and analysis and a system of vital records registration throughout the state. The ~~executive director~~commissioner of the department of health and human services or designee may create within the office of statistical services such working divisions as may be necessary to comply with the provisions of this chapter and shall appoint the directors of such divisions in accordance with the merit system laws and regulations of the state of North Dakota.

**SECTION 28. AMENDMENT.** Section 23-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-03. Director of the office of statistical services and associative duties, state and deputy state registrars.**

The ~~executive director~~commissioner of the department of health and human services or designee shall appoint a director of the office of statistical services, in accordance with the merit system laws and regulations of the state of North Dakota, who must be the ex officio state registrar of vital statistics. The deputy state registrar of vital statistics must also be appointed by the ~~executive director~~commissioner of the department of health and human services or designee. The director of the office of statistical services shall administer and enforce this chapter and the rules and regulations issued hereunder, and issue instructions for the efficient administration of a statewide system of health statistics tabulation and analysis and a statewide system of vital records registration. The director of the office of statistical services may delegate such functions and duties vested in the director to the officers and

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<sup>133</sup> Section 23-02.1-01 was also amended by section 1 of House Bill No. 1139, chapter 234, section 5 of House Bill No. 1474, chapter 66, and section 1 of Senate Bill No. 2379, chapter 233.

employees of the office of statistical services as the director deems necessary and expedient.

**SECTION 29. AMENDMENT.** Subsection 4 of section 23-07-02.3 of the North Dakota Century Code is amended and reenacted as follows:

4. If the governor declares an emergency or a disaster based on an epidemic under chapter 37-17.1, the state health officer shall consider whether to issue a temporary order ~~or the health council shall consider whether to adopt rules or emergency rules~~ to include this infectious disease as a reportable disease or condition or as a post-mortem communicable disease.

**SECTION 30. AMENDMENT.** Section 23-07-15 of the North Dakota Century Code is amended and reenacted as follows:

**23-07-15. Removal of individual with reportable disease or condition - Removal of body of individual who died of reportable disease or condition - Prohibited - Declaration of emergency or disaster - Rulemaking authority.**

1. Unless the person has a permit from the local board of health or department of health and human services, a person may not remove or cause to be removed from without this state into this state, from one building to another within this state, or from or to any railroad car or motor vehicle, an individual with a reportable disease or condition, or the body of an individual who died of a reportable disease or condition.
2. If the governor declares an emergency or a disaster based on an epidemic under chapter 37-17.1, the ~~health council~~ department of health and human services shall consider whether to adopt rules or emergency rules ~~directing the department of health and human services~~ to notify emergency medical services personnel of the presence of a reportable disease or condition and any person taking possession of a dead body of a post-mortem communicable disease. Notwithstanding state laws to the contrary, rules adopted under this section may provide for the disclosure of personally identifiable information.

**SECTION 31. AMENDMENT.** Section 23-07.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.2-01. Definitions.**

As used in this chapter, unless the context or subject matter otherwise requires:

4. "Hemophilia, "hemophilia"" means a bleeding tendency resulting from a genetically determined deficiency or abnormality of a blood plasma factor or component.
2. "State health officer" ~~means the state health officer as defined in this title.~~

**SECTION 32. 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 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~~department 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 33. AMENDMENT.** Subsection 4 of section 23-10-03 of the North Dakota Century Code is amended and reenacted as follows:

4. The department shall waive the license fee for any mobile home park, recreational vehicle park, or campground owned by the state, a municipality, or a nonprofit organization. The department shall waive all or a portion of the license fee for any mobile home park, recreational vehicle park, or campground that is subject to local sanitation, safety, and inspection requirements accepted by the department under section 23-10-02.1. A prorated annual license fee may be charged for new mobile home parks, recreational vehicle parks, and campgrounds. The ~~health council~~department may adopt rules establishing the amount and the procedures for the collection of annual license fees. The fees must be based on the cost of reviewing construction plans, conducting routine and complaint inspections, reinspection, and necessary enforcement action. License fees collected pursuant to this section must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.

**SECTION 34. AMENDMENT.** Section 23-10-06 of the North Dakota Century Code is amended and reenacted as follows:

**23-10-06. License issuance - Fee.**

An applicant seeking licensure shall apply to the department on forms prescribed by the department. The applicant shall enclose with the application an application fee as determined by rule. The department shall issue a license to an applicant who meets all of the requirements of this chapter and any rules adopted by the ~~health council~~department.

**SECTION 35. AMENDMENT.** Subsection 2 of section 23-10-06.1 of the North Dakota Century Code is amended and reenacted as follows:

2. A license may be renewed by December thirty-first by submitting a renewal application, a renewal fee established rule, provided the licensee is in compliance with this chapter and any rules established by the ~~health council~~department.

<sup>134</sup> **SECTION 36. AMENDMENT.** Section 23-10-12 of the North Dakota Century Code is amended and reenacted as follows:

**23-10-12. Revocation of license - Penalty for operating without license.**

The department may deny an application or take disciplinary action, up to and including revocation, against any applicant or licensee upon the failure of the

<sup>134</sup> Section 23-10-12 was also amended by section 2 of Senate Bill No. 2243, chapter 244.

applicant or licensee to comply with this chapter or with any of the rules adopted by the health council and regulations promulgated by the department. Before the department takes disciplinary action against a license, the department shall notify the licensee in writing of the reason disciplinary action is being considered and shall provide a reasonable amount of time for correction to be made. Action taken under the authority granted in this section must comply with chapter 28-32. Any person who maintains or operates a mobile home park, recreational vehicle park, or campground without first obtaining a license, or who operates the same after revocation of the license, is guilty of an infraction.

**SECTION 37. AMENDMENT.** Section 23-16-05 of the North Dakota Century Code is amended and reenacted as follows:

**23-16-05. Inspections, consultations, and approval of plans.**

The department of health and human services shall make or cause to be made such inspections as may be prescribed by regulation. The ~~health council~~department of health and human services may prescribe by regulations that any licensee or prospective applicant desiring to make a substantial alteration or addition to its facilities or to construct new facilities shall, before commencing such alteration, addition, or new construction, submit plans and specifications therefor to the department of health and human services for preliminary inspection, recommendation, and approval.

**SECTION 38. AMENDMENT.** Section 23-16-06 of the North Dakota Century Code is amended and reenacted as follows:

**23-16-06. Authority to issue, deny, suspend, or revoke licenses.**

1. The department of health and human services shall issue licenses for the operation of institutions subject to this chapter which are found to comply with the provisions of this chapter and rules adopted by the department. The ~~state health officer with the approval of the health council~~department of health and human services may, ~~after a hearing,~~ suspend or revoke licenses issued hereunder on any of the following grounds:
  1. a. Violation of any of the provisions of this chapter or the rules and regulations promulgated pursuant thereto.
  2. b. Permitting, aiding, or abetting the commission of any unlawful act.
  3. c. Conduct or practices detrimental to the health or safety of patients and employees of said institutions; provided that this provision may not be construed to have any reference to practices authorized by law; and provided further that no license may be suspended or revoked for any trivial violation.
2. No application for a license may be denied, or any licenses suspended or revoked, except after a hearing ~~before the health council held pursuant to written notice to the applicant or licensee, served by registered or certified mail, which notice must concisely state the grounds for such denial or for such proposed suspension or revocation and must fix the time and place of hearing which may not be less than thirty days after the date of the mailing of such notice. After such hearing, the council shall make an order, either denying the application for license or granting the same, or suspending or revoking such license, or dismissing the proceedings to suspend or revoke as the merits of~~

~~the case warrant. The council shall send a copy of its order to the applicant or licensee by registered or certified mail, which must contain its findings and conclusions, and such order, except an order of dismissal, becomes final thirty days after the date of mailing unless the applicant or licensee appeals therefrom in the manner provided by section 23-16-10.~~

**SECTION 39. AMENDMENT.** Section 23-16-10 of the North Dakota Century Code is amended and reenacted as follows:

**23-16-10. Appeal.**

~~An appeal may be taken to the district court from any order of the state health officer or health council denying an application for a license to operate a medical hospital or related institution, or suspending or revoking a license, or from any order denying an application for a construction project. Any such appeal must be taken to the office of administrative hearings in the manner provided in chapter 28-32.~~

**SECTION 40. AMENDMENT.** Section 23-16-11 of the North Dakota Century Code is amended and reenacted as follows:

**23-16-11. Penalties.**

1. Any person establishing, conducting, managing, or operating any institution subject to this chapter, without first obtaining a license as required by this chapter, or who violates any of the provisions of this chapter is guilty of an infraction.
2. In addition to any criminal sanctions that may be imposed pursuant to law, any person maintaining or operating a nursing facility licensed by the department of health and human services who is found guilty of knowingly violating any provision of this title or any rules adopted under this title, or any person maintaining or operating a nursing facility found to have deficiencies during a survey of the nursing facility, 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 of health and human services to enforce this penalty. This civil penalty may be imposed by a court in a civil proceeding or by the ~~state health officer~~department of health and human services through an administrative hearing under chapter 28-32. If a civil penalty levied by the department of health and human services after an administrative hearing is not paid within thirty days after a final determination that a civil penalty is owed, unless the determination of a civil penalty is appealed to a district court, the civil penalty and any costs incurred by the department of health and human services to enforce the penalty may be withheld from payments due to the person or nursing facility from the department of health and human services. Any funds received as penalties must be applied to protect residents of the nursing facility, to relocate residents, to maintain operation of the nursing facility, and to reimburse residents for loss of personal funds.

**SECTION 41. AMENDMENT.** Section 23-17-08 of the North Dakota Century Code is amended and reenacted as follows:

**23-17-08. Establishment of advisory committee.**

The chiropractic board of examiners shall request the governor to appoint an advisory committee consisting of the ~~executive director~~commissioner of the department of health and human services or designee, one chiropractic hospital

superintendent, and one person interested in chiropractic hospitals. One member is to serve for three years, one for two, and one is to serve for one year from the date of their appointment or until their successors are duly appointed. Following this first appointment, the term of office must be for three years. This advisory committee shall act in an advisory capacity to the chiropractic board of examiners in dealing with matters pertaining to particular problems of chiropractic hospitals and sanatoriums and other related institutions.

**SECTION 42. AMENDMENT.** Section 23-17.6-01 of the North Dakota Century Code is amended and reenacted as follows:

**23-17.6-01. Definitions.**

In this chapter, unless the context and subject matter otherwise require:

1. "Department" means the department of health and human services.
2. "Extended stay center" means a facility that provides extended stay services.
3. "Extended stay services" means postsurgical and postdiagnostic medical and nursing services provided to a patient recovering from a surgical procedure performed in an ambulatory surgical center.
4. "Operating room" has the meaning given that term in rules adopted by the ~~health council~~department.

**SECTION 43. AMENDMENT.** Section 23-17.6-02 of the North Dakota Century Code is amended and reenacted as follows:

**23-17.6-02. Registration required - Rules.**

A person may not conduct, maintain, or operate an extended stay center without a certificate of registration issued by the department. The ~~health council~~department shall adopt rules for the application, issuance, and renewal of a certificate of registration.

**SECTION 44. AMENDMENT.** Section 23-17.6-04 of the North Dakota Century Code is amended and reenacted as follows:

**23-17.6-04. Standards of registration.**

1. An extended stay center shall meet the following minimum standards for registration:
  - a. Must be affiliated with one or more facilities certified by the centers for Medicare and Medicaid services as an ambulatory surgical center;
  - b. Must have no more than two recovery beds for each operating room in the affiliated ambulatory surgical center, not to exceed a total of sixteen recovery beds;
  - c. Shall discharge patients within forty-eight hours from the time of admission to the extended stay center;
  - d. Shall conform to all patient safety and facility requirements adopted by the ~~health council~~department by rule;

- e. Shall use admission criteria based only on the extended stay center's:
    - (1) Medical screening criteria;
    - (2) Evidence-based surgery guidelines; or
    - (3) Patient safety standards;
  - f. Orally and in writing, shall clearly notify patients with Medicare coverage of the services provided by the extended stay center which are not covered by Medicare; and
  - g. Shall report data and metrics to the department as prescribed by rule, including the:
    - (1) Types of procedures performed at the affiliated ambulatory surgical center for which patients are transferred to the extended stay center for recovery;
    - (2) Average duration of patient stays at the extended stay center;
    - (3) Medical acuity of the patients served by the extended stay center; and
    - (4) Frequency and cause of patient transfers from the extended stay center to a hospital.
2. An extended stay center only may accept a patient from an ambulatory surgical center. Each ambulatory surgical center must:
- a. Be separated physically from the extended stay center operations;
  - b. Have demonstrated safe operating procedures in an outpatient surgery setting for no less than twenty-four consecutive months; and
  - c. Be certified by the centers for Medicare and Medicaid services as participating in the ambulatory surgical center quality reporting program administered by the centers for Medicare and Medicaid services.

**SECTION 45. AMENDMENT.** Section 23-17.6-06 of the North Dakota Century Code is amended and reenacted as follows:

**23-17.6-06. Rulemaking.**

The ~~health council~~ department shall adopt necessary rules relating to the extended stay centers, including rules governing:

- 1. Licensure qualifications of professional and ancillary personnel;
- 2. Standards for the organization and quality of patient care performed at the extended stay center;
- 3. Procedures for maintaining records;
- 4. Procedures for application, issuance, and renewal of certificate of registration;

5. Procedures for denial, suspension, or revocation of certificate of registration; and
6. Reviews of registered extended stay centers.

**SECTION 46. AMENDMENT.** Section 23-17.7-03 of the North Dakota Century Code is amended and reenacted as follows:

**23-17.7-03. License issuance and renewal - Evaluation and inspection - Rules.**

1. Upon receipt of an initial or renewal license application on forms established by the department, the department or the department's authorized representative shall evaluate and inspect the residential end-of-life facility. The department shall issue or renew a license for an applicant that submits a complete application, submits the appropriate fee, and meets the minimum requirements of this chapter.
2. In consultation with stakeholders, the ~~state health council~~department shall adopt rules:
  - a. For the application, issuance, and renewal of a license under this chapter;
  - b. Establishing minimum standards for licensure of a residential end-of-life facility; and
  - c. Establishing the fee for issuance of a license and renewal of a license of a residential end-of-life facility.

**SECTION 47. AMENDMENT.** Section 23-23-03 of the North Dakota Century Code is amended and reenacted as follows:

**23-23-03. Enforcement by health officer~~department~~ - Seizure - Inspection - Injunction.**

It is the duty of the ~~state health officer~~department of health and human services to enforce the provisions of this chapter, and for that purpose the investigators, inspectors, representatives, and agents of the department of health and human services shall have the full power and authority of peace officers in this state, and shall have the power and authority to administer oaths, to enter upon premises at all times for the purpose of making inspections, to seize evidence, to interrogate all persons, and to require the production of books, papers, documents, or other evidence. The ~~state health officer~~department of health and human services may institute, in its own name, proceedings to enjoin and restrain violations of this chapter, regardless of whether the defendant has been convicted of violation of the penal provisions thereof, and may not be required to pay any costs or filing fees or furnish any bond in connection therewith.

**SECTION 48. AMENDMENT.** Section 23-24-01 of the North Dakota Century Code is amended and reenacted as follows:

**23-24-01. Definitions.**

As used in this chapter unless the context or subject matter otherwise provides:

1. "Board" means the board of commissioners of a vector control district.

2. "District" means a vector control district established for the control of public health vectors.
3. "Department" means the department of health and human services.
3. "Health officer" means the state health officer.
4. "Potential or emergency health hazard" means a potential or existing infestation by public health vectors that is detrimental to human health and well-being.
5. "Public health vectors" means all species of mosquitoes and flies.

**SECTION 49. AMENDMENT.** Section 23-24-02 of the North Dakota Century Code is amended and reenacted as follows:

**23-24-02. Petition for establishment of vector control districts - Hearing thereon and investigation - District when created.**

Whenever there is filed with the ~~state health council~~department a petition signed by the governing body of a county, city, or township or by twenty percent or more of the freeholders within the limits of a proposed vector control district, the ~~state health council~~department shall fix a time and place for a public hearing on such petition. The place of hearing must be convenient and accessible for a majority of the freeholders of the proposed district. Not less than ten days prior to the date of hearing, notice thereof must be published in at least one newspaper of general circulation in the proposed district. Prior to such hearing the ~~state health officer~~department shall make or cause to be made an investigation of the need for the establishment of the proposed vector control district and shall submit his report to the ~~council~~department. If the ~~state health council~~department finds that it is not feasible, desirable, or practical to establish the proposed district, it shall make an order denying the petition and state therein the reasons for its action. If, however, the ~~council~~department finds the problems of vector control or other reasons make the establishment of the proposed district desirable, proper, and necessary, it shall grant the petition and create such district and establish the boundaries thereof.

**SECTION 50. AMENDMENT.** Section 23-24-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**23-24-02.1. Petition for withdrawing from a vector control district - Hearing and investigation - Boundary modification.**

Any county, city, or township or portion of a county, city, or township may withdraw from a vector control district whenever a petition signed by the governing body of the county, city, or township or at least twenty percent of the residents of the county, city, or township, or portion thereof, desiring to withdraw from the district, is approved by the ~~state health council~~department. Prior to approving a petition to withdraw from the district, the ~~state health council~~department shall fix a time and place for a public hearing on the petition. The place of the hearing must be convenient and accessible for a majority of the residents of the district. At least ten days prior to the date of the hearing, the ~~state health council~~department shall publish a notice of the hearing in at least one newspaper of general circulation in the district. Prior to the hearing the ~~state health officer~~department shall investigate the petition to withdraw and shall submit a report to the council. If the ~~state health council~~department finds that it is not feasible, desirable, or practical to allow the petitioning entity to withdraw from the district, it shall make an order denying the petition and state the reasons for its action. If the

~~council~~~~department~~ finds that the petitioning entity is no longer benefited by being included within the boundaries of the district or if other reasons make the withdrawal of the petitioning entity desirable, proper, and necessary, it shall grant the petition and modify the boundaries of the district. No person may be a member of the board of commissioners if that person is no longer a resident of the vector control district after the boundaries have been modified. A new member must be appointed to replace any such member in the manner provided for original appointments.

**SECTION 51. AMENDMENT.** Section 23-24-06 of the North Dakota Century Code is amended and reenacted as follows:

**23-24-06. Oath of office - Organization of board of commissioners - Appointment of employees - Meetings.**

Upon receiving notice of appointment as a member of the board of commissioners of a vector control district, such appointee shall take the oath of office prescribed for civil officers. Such oath must be filed with the secretary of the board after organization thereof as herein provided. Notice of the appointment of a member or members of a board of commissioners must be mailed to the governing body of the county, city, or township included within said district. Such notice must state the name and post-office address of each appointee and the date of the appointment and must request approval of the same. The commissioners appointed after their approval shall meet to organize at a time and place designated by the ~~state health~~~~council~~~~department~~ and shall organize by selecting a chairman of the board and naming a temporary secretary pending appointment of a permanent secretary. A majority of the commissioners constitutes a quorum for the transaction of business as may come before the board but any number may adjourn a meeting for want of a quorum. The board shall appoint a secretary and treasurer and such other employees as may be deemed needed for efficient conduct of the district's business and shall fix their compensation. The office of secretary and treasurer may be held by the same person. Officers and employees shall hold office during the pleasure of the board. The board shall provide an office suitable for its use as a meeting place and for conducting the affairs of the district. It shall adopt such rules or regulations for transacting the business of the district as it may deem necessary, including the time and place of holding regular meetings of the board. Special meetings may be called by the secretary on order of the chairman of the board or on written request of two members of the board. Notice of the special meeting must be mailed to each member of the board at least five days before any such meeting, provided that a special meeting may be held whenever all members of the board are present or consent thereto in writing.

**SECTION 52. AMENDMENT.** Section 23-27-03 of the North Dakota Century Code is amended and reenacted as follows:

**23-27-03. License fees.**

The fee for an emergency medical services operation license to operate an emergency medical services operation or a substation ambulance services operation must be set by the ~~state health~~~~council~~ at a sum of not more than twenty-five dollars annually, as may be required to defray the costs of administration of the licensing program. This operation license fee does not apply to licensure or certification of emergency medical services personnel. All license fees must be paid to the department of health and human services and deposited with the state treasurer and credited to the state general fund.

**SECTION 53. AMENDMENT.** Section 23-27-04.7 of the North Dakota Century Code is amended and reenacted as follows:

**23-27-04.7. County reporting - Use of property tax levies.**

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 department of health and human services. A taxing district that levies a special emergency medical services or ambulance service levy shall allocate all of the special tax levy revenue collected in a particular township to the ambulance service that serves the largest area within that township.

**SECTION 54. AMENDMENT.** Subsection 3 of section 23-27-04.9 of the North Dakota Century Code is amended and reenacted as follows:

3. Licensed or certified emergency medical services personnel may perform laboratory testing authorized by rule adopted by the ~~health council~~department.

**SECTION 55. AMENDMENT.** Section 23-35.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**23-35.1-02. Regional public health network - Joint powers agreement - Review by state health officer~~department~~ - Criteria.**

Before a group of public health units may be designated as a regional public health network and eligible for state funding, the ~~state health officer~~department shall review the joint powers agreement the public health units entered and verify that:

1. The regional public health network consists of:
  - a. At least two public health units serving a minimum population of fifteen thousand; or
  - b. A minimum of three public health units.
2. The joint powers agreement requires that the participating public health units:
  - a. Assess the health of the population;
  - b. Identify workplan activities that meet the needs of the region;
  - c. Comply with requirements adopted by ~~the health council~~ by rule;
  - d. 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 the most recent calendar year; and
  - e. Share core public health activities and measure outcomes in accordance with subsection 3.
3. The joint powers agreement requires:
  - a. Evidence that network activities align with prevailing health status and community needs;
  - b. Shared or expanded services, including the core public health activities of:

- (1) Preventing epidemics and spread of disease;
  - (2) Protecting against environmental hazards;
  - (3) Preventing injuries;
  - (4) Promoting health behaviors;
  - (5) Responding to disasters; and
  - (6) Assuring the quality and accessibility of health services;
- c. Assurance of network performance measurement to demonstrate capacity, process, or health outcomes;
  - d. Criteria for the future participation of public health units that were not parties to the original joint powers agreement;
  - e. An application process by which public health units that were not parties to the original joint powers agreement may become participating districts; and
  - f. 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~~department.
4. The joint powers agreement provides for the structure of the governing body of the network.

**SECTION 56. AMENDMENT.** Section 23-35.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**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 core public health activities and shall submit the plan to the ~~state health officer~~department for approval.

**SECTION 57. AMENDMENT.** Section 23-36-08 of the North Dakota Century Code is amended and reenacted as follows:

**23-36-08. Limitation on liability.**

Subject to any other requirements of section 32-12.2-02, the owner of an animal may bring a claim for money damages, and may recover an amount up to the replacement value of the animal, if the owner establishes that before the animal was seized and tested for rabies under this chapter, the ~~state health officer, or the state health officer's designee~~department, knew or recklessly failed to determine that the animal, at the time of the exposure, was lawfully owned and licensed and that:

1. The animal had not bitten, scratched, or otherwise possibly exposed another animal or an individual to rabies; or
2. The animal was a domestic animal and there was not probable cause to believe the animal was rabid.

**SECTION 58. AMENDMENT.** Subsection 1 of section 23-38.1-02 of the North Dakota Century Code is amended and reenacted as follows:

1. The department of health and human services shall establish a cardiac ready community grant program advisory committee with members appointed by the ~~executive director~~commissioner of the department of health and human services or designee. The advisory committee shall advise the department of health and human services in the development of the cardiac ready community grant program and the membership must include a representative of the department of health and human services, one cardiac ready community member, one representative of the emergency medical services association, one representative of the American heart association, one representative of the cardiac task force, one representative of the stroke task force, one representative of the emergency services advisory committee, one survivor advocate, and the department of health and human services emergency medical services and trauma medical director.

**SECTION 59. AMENDMENT.** Section 23-43-01 of the North Dakota Century Code is amended and reenacted as follows:

**23-43-01. Stroke system –~~Duties of state health officer.~~**

The ~~state health officer~~department of health and human services shall establish and maintain a comprehensive stroke system for the state. The program must comply with this chapter; be based on department-approved, nationally recognized guidelines and protocols; and provide specific patient care and support services criteria stroke centers shall meet to ensure stroke patients receive safe and effective care, and must modify the state's emergency medical response system to assure stroke patients are quickly identified and transported to and treated in facilities that have specialized programs for providing timely and effective treatment for stroke patients. The stroke system must include standards for the following components:

1. A system plan.
2. Prehospital emergency medical services.
3. Hospitals, for which the standards must include:
  - a. Standards for designation, redesignation, and removal of designation.
  - b. Standards for evaluation and quality improvement programs for designated facilities. The standards must require each facility to collect quality improvement data and to provide specified portions to the department of health and human services for use in state and regional stroke quality improvement programs.
4. A stroke registry. Data in the stroke registry is not subject to subpoena or discovery or introduction into evidence in any civil action. A designated facility shall participate in the stroke registry. A hospital not designated shall provide to the stroke registry a minimum set of data elements for all stroke patients as determined by the stroke system of care advisory task force.
5. A stroke quality improvement program to monitor the performance of the stroke system. The proceedings and records of the stroke quality improvement program are not subject to subpoena or discovery or introduction

into evidence in any civil action arising out of any matter that is the subject of consideration by the stroke quality improvement program.

**SECTION 60. AMENDMENT.** Subsection 3 of section 23-43-05 of the North Dakota Century Code is amended and reenacted as follows:

3. The stroke system of care task force shall make recommendations to the department of health and human services ~~and health council~~. Upon receiving such recommendations, the department of health and human services may adopt rules implementing the recommendations.

**SECTION 61. AMENDMENT.** Section 23-46-02 of the North Dakota Century Code is amended and reenacted as follows:

**23-46-02. Emergency medical services advisory council.**

1. The department of health and human services shall establish an emergency medical services advisory council.
2. The council must include at:
  - a. At least three representatives appointed by an emergency medical services organization, one;
  - b. One individual to represent basic life support and one, appointed by the commissioner of the department of health and human services or designee;
  - c. One individual to represent advanced life support, both appointed by the executive director commissioner of the department of health and human services or designee, and other; and
  - d. Other members designated by the executive director commissioner of the department of health and human services or designee, not to exceed a total of fourteen members.
3. The department of health and human services ~~and the state health officer~~ shall consider the recommendations of the council on the:
  - a. The plan for integrated emergency medical services in the state, development;
  - b. Development of emergency medical services funding areas, development;
  - c. Development of the emergency medical services funding areas application process and budget criteria; and other
  - d. Other issues relating to emergency medical services as determined by the executive director commissioner of the department of health and human services or designee or the state health officer.
4. Council members are entitled to reimbursement for expenses in the manner provided in section 44-08-04. The department of health and human services shall establish by policy the length of terms and the method for rotation of membership.

**SECTION 62. AMENDMENT.** Subsection 1 of section 23-47-03 of the North Dakota Century Code is amended and reenacted as follows:

1. The ~~executive director~~commissioner of the department of health and human services or designee shall appoint the members of the acute cardiovascular emergency medical system of care advisory committee. The state health officer, or the officer's designee, is an ex officio member of the advisory committee. The ~~executive director~~commissioner of the department of health and human services or designee shall appoint to the committee members who represent referring and receiving hospitals, physicians who treat patients, and members who represent emergency medical services operations that provide services in rural and urban areas of the state. Members of the acute cardiovascular emergency medical system of care advisory committee serve at the pleasure of the ~~executive director~~commissioner of the department of health and human services.

**SECTION 63. AMENDMENT.** Subsection 7 of section 25-01-01 of the North Dakota Century Code is amended and reenacted as follows:

7. "Supervising officer" means the ~~executive director~~commissioner of the department of health and human services or designee or the superintendent of public instruction, as the case may be.

**SECTION 64. AMENDMENT.** Subsection 1 of section 25-01-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. There must be maintained in the department of health and human services a state council on developmental disabilities consisting of:
  - a. One representative of each of the following departments, divisions, institutions, and organizations designated by the head of such agency or organization:
    - (1) Office of superintendent of public instruction.
    - (2) Job service North Dakota.
  - b. Three representatives of the department of health and human services to include at least:
    - (1) One representative from the life skills and transition center designated by its superintendent; and
    - (2) One representative from the department's public health division.

**SECTION 65. 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~~commissioner of the department of health and human services or designee; the director of the division of behavioral health of the department or designee, who shall serve as chairman of the governing body; the state hospital superintendent; the state hospital medical director; a representative of the department's fiscal administration division; a behavioral health consumer selected by the mental health association; and a legislator selected by the legislative management.

The governing body may include other persons as appointed by the governing body.

**SECTION 66. AMENDMENT.** Section 25-03.1-34.1 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.1-34.1. Exchange of individuals with a substance use disorder.**

The ~~director~~commissioner of the department of health and human services or designee, a county, a city, or a local law enforcement agency may enter into reciprocal agreements with the appropriate authorities of any other state regarding the mutual exchange, return, and transportation of individuals with a mental illness or substance use disorder who are treated or confined in hospitals of one state for treatment of a substance use disorder or mental illness but who have legal residence in another state.

**SECTION 67. AMENDMENT.** Section 25-03.3-01 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.3-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Committed individual" means an individual committed for custody and treatment pursuant to this chapter.
2. "~~Executive director~~" means ~~the executive director of the department of health and human services or the executive director's designee.~~
3. "Intellectual disability" means mental retardation as defined in the "Diagnostic and Statistical Manual of Mental Disorders", American psychiatric association, (4<sup>th</sup> edition, text revision 2000).
- 4-3. "Qualified expert" means an individual who has an expertise in sexual offender evaluations and who is a psychiatrist or psychologist trained in a clinical program and licensed pursuant to this state's law or a psychologist approved for exemption by the North Dakota board of psychologist examiners. For purposes of evaluating an individual with an intellectual disability, the qualified expert must have specialized knowledge in sexual offender evaluations of individuals with an intellectual disability.
- 5-4. "Respondent" means an individual subject to a commitment proceeding pursuant to this chapter.
- 6-5. "Sexual act" means sexual contact between human beings, including contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or the vulva and the vulva; or the use of an object that comes in contact with the victim's anus, vulva, or penis. Sexual contact between the penis and the vulva, or between the penis and the anus, or an object and the anus, vulva, or penis of the victim, occurs upon penetration, however slight. Emission is not required.
- 7-6. "Sexual contact" means any touching of the sexual or other intimate parts of an individual for the purpose of arousing or satisfying sexual or aggressive desires.

8-7. "Sexually dangerous individual" means an individual who is shown to have engaged in sexually predatory conduct and who has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct which constitute a danger to the physical or mental health or safety of others. It is a rebuttable presumption that sexually predatory conduct creates a danger to the physical or mental health or safety of the victim of the conduct. For these purposes, intellectual disability is not a sexual disorder, personality disorder, or other mental disorder or dysfunction.

9-8. "Sexually predatory conduct" means:

- a. Engaging or attempting to engage in a sexual act or sexual contact with another individual, or causing or attempting to cause another individual to engage in a sexual act or sexual contact, if:
  - (1) The victim is compelled to submit by force or by threat of imminent death, serious bodily injury, or kidnapping directed toward the victim or any human being, or the victim is compelled to submit by any threat or coercion that would render a person reasonably incapable of resisting;
  - (2) The victim's power to appraise or control the victim's conduct has been substantially impaired by the administration or employment, without the victim's knowledge, of intoxicants or other means for purposes of preventing resistance;
  - (3) The actor knows or should have known that the victim is unaware that a sexual act is being committed upon the victim;
  - (4) The victim is less than fifteen years old;
  - (5) The actor knows or should have known that the victim has a disability that substantially impairs the victim's understanding of the nature of the sexual act or contact;
  - (6) The victim is in official custody or detained in a treatment facility, health care facility, correctional facility, or other institution and is under the supervisory authority, disciplinary control, or care of the actor;
  - (7) The victim is a minor and the actor is an adult; or
  - (8) The other individual is a person related to the actor within a degree of consanguinity within which marriages are declared incestuous and void by section 14-03-03 and the actor knows that; or
- b. Engaging in or attempting to engage in sexual contact with another individual or causing or attempting to cause another individual to have sexual contact, if:
  - (1) The actor knows or should have known that the contact is offensive to the victim; or

(2) The victim is a minor, fifteen years of age or older, and the actor is the minor's parent, guardian, or is otherwise responsible for general supervision of the victim's welfare.

40-9. "Should have known" means a reasonable individual without a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction in the actor's circumstances would have known.

44-10. "Superintendent" means the superintendent of the state hospital or the superintendent's designee.

42-11. "Treatment facility" means any hospital, including the state hospital, or any treatment facility, including the life skills and transition center, which can provide directly, or by direct arrangement with other public or private agencies, evaluation and treatment of sexually dangerous individuals.

**SECTION 68. AMENDMENT.** Section 25-03.3-12 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.3-12. Sexually dangerous individual - Evaluation.**

The evaluation must be conducted by one or more experts chosen by the ~~executive director~~commissioner. Whenever a respondent is subject to an evaluation pursuant to this chapter, the respondent may retain an expert to perform an evaluation or testify on the respondent's behalf. When the respondent is an adult with an intellectual disability and a guardian or guardian ad litem has not been appointed for the respondent, the court shall appoint an expert to perform an evaluation on behalf of the respondent. In the case of a respondent who is indigent, the court shall appoint a qualified expert to perform an examination or participate in the commitment proceeding on the respondent's behalf. The department of health and human services shall compensate any qualified expert appointed by the court on behalf of an indigent respondent in a reasonable amount based on time and expenses. An expert retained on behalf of the respondent must have reasonable access to the respondent for the purpose of the examination and to all relevant medical, psychological, and court records and reports.

**SECTION 69. AMENDMENT.** Section 25-03.3-13 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.3-13. Sexually dangerous individual - Commitment proceeding - Report of findings.**

Within sixty days after the finding of probable cause, the court shall conduct a commitment proceeding to determine whether the respondent is a sexually dangerous individual. The court may extend the time for good cause. At the commitment proceeding, any testimony and reports of an expert who conducted an examination are admissible, including risk assessment evaluations. Any proceeding pursuant to this chapter must be tried to the court and not a jury. At the commitment proceeding, the state's attorney shall present evidence in support of the petition and the burden is on the state to show by clear and convincing evidence that the respondent is a sexually dangerous individual. An individual may not be committed unless expert evidence is admitted establishing that the individual has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct. The respondent has a right to be present,

to testify, and to present and cross-examine witnesses. If the respondent is found to be a sexually dangerous individual, the court shall commit the respondent to the care, custody, and control of the ~~executive director~~commissioner. The ~~executive director~~commissioner shall place the respondent in an appropriate facility or program at which treatment is available. The appropriate treatment facility or program must be the least restrictive available treatment facility or program necessary to achieve the purposes of this chapter. The ~~executive director~~commissioner may not be required to create a less restrictive treatment facility or treatment program specifically for the respondent or committed individual. Unless the respondent has been committed to the legal and physical custody of the department of corrections and rehabilitation, the respondent may not be placed at and the treatment program for the respondent may not be provided at the state penitentiary or an affiliated penal facility. If the respondent is found not to be a sexually dangerous individual, the court shall discharge the respondent.

**SECTION 70. AMENDMENT.** Section 25-03.3-14 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.3-14. Interagency placement.**

If a committed individual also has been committed to the legal and physical custody of the department of corrections and rehabilitation, the director of the department of corrections and rehabilitation and the ~~executive director~~commissioner may consult one another and determine the appropriate placement of the individual and may transfer the individual between placements.

**SECTION 71. AMENDMENT.** Section 25-03.3-17 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.3-17. Postcommitment proceeding, discharge, and further disposition.**

1. A committed individual must remain in the care, custody, and control of the ~~executive director~~commissioner until, in the opinion of the ~~executive director~~commissioner, the individual is safe to be at large.
2. Each committed individual must have an examination of that individual's mental condition at least once a year. A report regarding the examination must be provided to the court that committed the individual. At the time of the annual examination, the committed individual has the right to have an expert examine the individual, and, upon the request of an indigent committed individual, the court shall appoint a qualified expert to examine the committed individual and report to the court. The department of health and human services shall compensate a qualified expert appointed by the court in a reasonable amount based on time and expenses. That expert must have reasonable access to the committed individual and to all records relating to the committed individual, including confidential records.
3. If a committed individual has been committed to an out-of-state facility by the ~~executive director~~commissioner for purposes of treatment, an expert from that state may be appointed by the court as a qualified expert for an indigent committed individual for any postcommitment proceeding.
4. After any report pursuant to this section is provided to the court, the court may order further examination and investigation of the committed individual as the court considers necessary. The court may set the matter for a hearing. At the hearing, the committed individual is entitled to be present and to the benefit of

the protections afforded at the commitment proceeding. The state's attorney shall represent the state at the hearing. After the hearing, the court shall determine whether the committed individual is to be discharged or to be retained as a sexually dangerous individual in the care, custody, and control of the ~~executive director~~commissioner.

5. The ~~executive director~~commissioner may only discharge a sexually dangerous individual from commitment pursuant to a court order. The ~~executive director~~commissioner may petition the committing court at any time for the discharge of the committed individual. The ~~executive director~~commissioner shall give the state's attorney notice of any petition for discharge the ~~executive director~~commissioner files with the court. Before the petition is granted, the state's attorney has the right to be heard by the court on the petition. The state's attorney may waive this right.
6. If the ~~executive director~~commissioner moves a committed individual from a placement in the community to a placement in a secure treatment facility that is more restrictive, the committed individual may challenge the move at a hearing to be held within thirty days after the move in accordance with procedures established by the department of health and human services.

**SECTION 72. AMENDMENT.** Section 25-03.3-18 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.3-18. Petition for discharge - Notice.**

1. Annually, the ~~executive director~~commissioner shall provide the committed individual with written notice that the individual has a right to petition the court for discharge. The notice must explain to the committed person when the committed person has a right to a hearing on the petition. The notice must inform the committed person of the rights this chapter affords the committed person at a discharge hearing. The ~~executive director~~commissioner shall forward a copy of the notice to the committing court. If the committed individual is an individual with an intellectual disability, the ~~executive director~~commissioner shall also provide the written notice to the individual's attorney, guardian, and guardian ad litem, if any.
2. If the committed individual files a petition for discharge and has not had a hearing pursuant to section 25-03.3-17 or this section during the preceding twelve months, the committed individual has a right to a hearing on the petition.
3. At the hearing on the petition for discharge, the committed individual is entitled to be present and to the benefit of the protections afforded at the commitment proceeding. The state's attorney shall represent the state and may have the committed individual evaluated by experts chosen by the state. The committed individual is entitled to have an expert of the committed individual's choice conduct an evaluation. The court shall appoint a qualified expert if the committed individual is indigent and requests an appointment. The department of health and human services shall compensate a qualified expert appointed by the court in a reasonable amount based on time and expenses. That expert must have reasonable access to the committed individual and to all records relating to the committed individual, including confidential records.

4. At any hearing held pursuant to a petition for discharge, the burden of proof is on the state to show by clear and convincing evidence that the committed individual remains a sexually dangerous individual.

**SECTION 73. AMENDMENT.** Section 25-03.3-18.1 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.3-18.1. Annual review - Petition for discharge - Inapplicability during periods of imprisonment.**

Sections 25-03.3-17 and 25-03.3-18 do not apply if a respondent, during a period of commitment under this chapter, is transferred to the custody of the department of corrections and rehabilitation in accordance with section 29-27-07 or is serving a term of imprisonment in a county jail or regional corrections center. Upon release from imprisonment, the respondent must be retransferred to the care, custody, and control of the ~~executive director~~ commissioner. Upon retransfer, the respondent is entitled to a review to determine whether continued commitment under this chapter is warranted.

**SECTION 74. AMENDMENT.** Section 25-03.3-24 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.3-24. Postcommitment community placement - Penalty.**

1. Following commitment of a sexually dangerous individual, the ~~executive director~~ commissioner may conduct a risk management assessment of the committed individual for the purpose of determining whether the individual may be treated safely in the community on an outpatient basis. The ~~executive director~~ commissioner may place a committed individual in the community for treatment on an outpatient basis only pursuant to a court order. The ~~executive director~~ commissioner may petition the court at any time for community placement. The ~~executive director~~ commissioner shall give the state's attorney of the county of community placement notice of any petition for community placement the ~~executive director~~ commissioner files with the court. Before the petition is granted, the state's attorney has the right to be heard by the court. The state's attorney may waive this right. At any hearing held pursuant to a petition by the ~~executive director~~ commissioner for the community placement of a committed individual, the burden of proof required of the ~~executive director~~ commissioner is a preponderance of the evidence. The court's order of community placement must contain appropriate restrictions and requirements for the committed individual, including:
  - a. Participation and compliance with a specific course of treatment;
  - b. Submission to electronic monitoring and any other appropriate supervision;
  - c. Prohibition of the individual changing place of residency or leaving the state without prior authorization of the court;
  - d. Establishment of safety zones, and compliance by the committed individual with those safety zones;
  - e. Requirement that the committed individual notify the court within twenty-four hours of any change in the individual's status that affects proper treatment or supervision;

- f. Contact with victims is prohibited independent of a supervised treatment plan; and
  - g. Any other restriction or requirement deemed necessary by the court to assure public safety and proper treatment of the committed individual.
2. Violation by a committed individual of a court order issued pursuant to this section is a class C felony.

<sup>135</sup> **SECTION 75. AMENDMENT.** Section 25-04-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**25-04-08.1. Notification before discharge.**

Before discharge the superintendent shall consult with the parent or guardian of the person to be discharged, or with the court that ordered the commitment, and shall notify the director of the ~~county social service board~~ or human service zone of the county in which it is proposed that such person will assume residence and also shall notify the ~~executive director/commissioner~~ of the department of health and human services or designee.

**SECTION 76. AMENDMENT.** Section 25-11-02 of the North Dakota Century Code is amended and reenacted as follows:

**25-11-02. Compact administrator - Powers.**

Pursuant to said compact, the ~~executive director/commissioner~~ of the department of health and human services or designee must be the compact administrator and who, acting jointly with like officers of other party states, may adopt rules to carry out more effectively the terms of the compact. The compact administrator shall cooperate with all departments, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or any supplementary agreement or agreements entered into by this state thereunder.

**SECTION 77. AMENDMENT.** Subsection 2 of section 37-17.4-01 of the North Dakota Century Code is amended and reenacted as follows:

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~~department of health and human services, a local board of health, or the state veterinarian.

**SECTION 78. AMENDMENT.** Section 43-10-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-10-02. State board of funeral service - Members - Appointment - Qualifications - Term of office - Oath - Vacancies - Removal.**

The board consists of the state health officer or designee and three persons appointed by the governor. Each member appointed by the governor shall serve for a term of four years and until a successor is appointed and qualified. The terms of office of the appointed members expire on the thirtieth day of June and must be so arranged that only one expires in any one year. The appointed members of the board

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<sup>135</sup> Section 25-04-08.1 was also amended by section 12 of Senate Bill No. 2052, chapter 271.

must be persons practicing embalming in this state and must have practiced for a minimum of three years in North Dakota. Each member shall qualify by taking the oath of office required of civil officers. The secretary of state may administer the oath and it must be filed in the office of the secretary of state. A vacancy on the board must be filled by appointment by the governor for the unexpired term. The governor may remove any member of the board for good cause.

**SECTION 79. AMENDMENT.** Section 43-12.3-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.3-01. Student loan repayment programs - Health care professionals.**

The ~~health council~~department of health and human services shall administer student loan repayment programs, as established by this chapter, for health care professionals willing to provide services in areas of this state that have a defined need for such services.

**SECTION 80. AMENDMENT.** Section 43-12.3-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.3-02. Application process.**

The ~~health council~~department of health and human services shall develop an application process for public and private entities seeking to fill health care needs and for health care professionals willing to provide necessary services in exchange for benefits under a student loan repayment program.

**SECTION 81. AMENDMENT.** Section 43-12.3-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.3-03. Public and private entities - Selection criteria - Matching funds.**

1. The ~~health council~~department of health and human services shall establish criteria to be used in selecting public and private entities for participation in a program. The criteria must include:
  - a. The number of health care professionals, by specified field, already providing services in the area;
  - b. Access to health care services in the area; and
  - c. The level of support from the area.
2. The ~~health council~~department of health and human services may consult with health care and social service providers, advocacy groups, governmental entities, and others in establishing criteria and evaluating needs based on the criteria.
3. An entity may not be selected for participation unless it contractually commits to provide matching funds equal to the amount required for a loan repayment program in accordance with section 43-12.3-06.

**SECTION 82. AMENDMENT.** Section 43-12.3-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.3-04. Public and private entities - Eligibility for participation - Priority.**

In selecting public and private entities for participation in a program the ~~health council~~department of health and human services shall give priority to an entity that:

1. Meets the selection criteria;
2. Is located in an area that is statistically underserved; and
3. Is located at least twenty miles [32.18 kilometers] outside the boundary of a city having more than forty thousand residents.

**SECTION 83. AMENDMENT.** Section 43-12.3-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.3-05. Health care professionals - Selection criteria.**

1. The ~~health council~~department of health and human services shall establish criteria to be used in selecting health care professionals for participation in a student loan repayment program. The criteria must include:
  - a. The health care professional's specialty;
  - b. The need for the health care professional's specialty within an area;
  - c. The health care professional's education and experience;
  - d. The health care professional's date of availability and anticipated term of availability; and
  - e. The health care professional's willingness to accept Medicare and Medicaid assignments, if applicable.
2. In selecting health care professionals for participation in the program the ~~health council~~department of health and human services shall require that the individual:
  - a. Is physically present at and provides services on a full-time basis to an entity that meets the requirements of section 43-12.3-04; or
  - b. (1) Is physically present at and provides services on at least a half-time basis to an entity that meets the requirements of section 43-12.3-04;
  - (2) Provides telehealth services to a second entity that meets the requirements of section 43-12.3-04; and
  - (3) Verifies that the services provided under paragraphs 1 and 2 are equal to the full-time requirement of subdivision a.
3. In selecting health care professionals for participation in a program, the ~~health council~~department of health and human services may consider an individual's:
  - a. Length of residency in this state; and
  - b. Attendance at an in-state or an out-of-state institution of higher education.

<sup>136</sup> **SECTION 84. AMENDMENT.** Section 43-12.3-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.3-06. Student loan repayment program - Contract.**

1. The ~~health council~~department of health and human services shall enter a contract with a selected health care professional. The ~~health council~~department of health and human services shall agree to provide student loan repayments on behalf of the selected health care professional subject to the requirements and limitations of this section.
  - a. For a physician:
    - (1) The loan repayment may not exceed twenty thousand dollars per year, and may not exceed one hundred thousand dollars over five years; and
    - (2) The matching funds must equal fifty percent of the amount required in paragraph 1.
  - b. For a clinical psychologist:
    - (1) The loan repayment may not exceed twelve thousand dollars per year, and may not exceed sixty thousand dollars over five years; and
    - (2) The matching funds must equal twenty-five percent of the amount required in paragraph 1.
  - c. For an advanced practice registered nurse or a physician assistant:
    - (1) The loan repayment may not exceed four thousand dollars per year, and may not exceed twenty thousand dollars over five years; and
    - (2) The matching funds must equal ten percent of the amount required in paragraph 1.
  - d. For a behavioral health professional:
    - (1) The loan repayment may not exceed four thousand dollars per year, and may not exceed twenty thousand dollars over five years; and
    - (2) The matching funds must equal ten percent of the amount required in paragraph 1.
  - e. For purposes of this section, a behavioral health professional means an individual who practices in the behavioral health field and is:
    - (1) A licensed addiction counselor;
    - (2) A licensed professional counselor;
    - (3) A licensed social worker;

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<sup>136</sup> Section 43-12.3-06 was also amended by section 1 of Senate Bill No. 2344, chapter 381.

- (4) A registered nurse;
  - (5) A specialty practice registered nurse; or
  - (6) A licensed behavior analyst.
2. a. Payments under this section must be made on behalf of the health care professional directly to the Bank of North Dakota or to another participating lending institution.
  - b. Except as otherwise provided, payments under this section may be made only at the conclusion of each twelve month period of service.
  - c. Prorated payments may be made only if:
    - (1) The repayment of the loan requires less than a full annual payment;
    - (2) The health care professional is terminated or resigns from his or her position; or
    - (3) The health care professional is unable to complete a twelve-month period of service due to the individual's death, a certifiable medical condition or disability, or a call to military service.
  3. Payments under this section terminate upon the earlier of:
    - a. The full repayment of the health care professional's student loan; or
    - b. The completion of five years as a participant in the student loan repayment program.
  4. The ~~health council~~department of health and human services shall waive the requirements of this section that pertain to matching funds if the health care professional opens a new practice as a solo practitioner in a city that has fewer than fifteen thousand residents.

**SECTION 85. AMENDMENT.** Section 43-12.3-07 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.3-07. Powers of the ~~health council~~department of health and human services - Continuing appropriation.**

1. The ~~health council~~department of health and human services may:
  - a. Receive and expend any gifts, grants, and other funds for the purposes of this program;
  - b. Participate in any federal programs providing for the repayment of student loans on behalf of health care professionals; and
  - c. Do all things necessary and proper for the administration of this chapter.
2. All moneys received by the ~~health council~~department of health and human services under this section are appropriated to the ~~health council~~department of health and human services on a continuing basis, to be used exclusively for the purposes of this chapter.

**SECTION 86. AMENDMENT.** Subsection 14 of section 43-15-10 of the North Dakota Century Code is amended and reenacted as follows:

14. To adopt, amend, and repeal rules determined necessary by the board for the proper administration and enforcement of this chapter, chapter 19-02.1 as that chapter pertains to drugs, subject to approval of the ~~director~~commissioner of the department of health and human services or designee, and chapter 19-03.1.

**SECTION 87. AMENDMENT.** Section 43-28.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-28.1-01. Loan repayment program - Dentists - Defined need - Maximum amount of funds.**

Annually, the ~~state health council~~department of health and human services shall select, from a pool of applicants, dentists who will provide dental services in cities or surrounding areas, or both, in this state which the ~~state health council~~department of health and human services identifies as having a defined need for dental services. The dentists selected from this pool of applicants shall agree to accept medical assistance patients and assignments or provide dental services in a public health clinic, a practice with a focus on an underserved population, or a nonprofit dental clinic. A selected dentist who agrees to the terms of this program is eligible to receive funds for the repayment of the dentist's education loans. The funds, which are payable over a five-year period, may not exceed one hundred thousand dollars per applicant. If the ~~state health council~~department of health and human services accepts any gifts, grants, or donations under this chapter, the ~~council~~department of health and human services may select additional dentists for participation in the loan repayment program under this chapter.

**SECTION 88. AMENDMENT.** Section 43-28.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-28.1-03. Criteria.**

1. The ~~health council~~department of health and human services shall establish criteria to be used in selecting qualified dentists and in identifying cities or surrounding areas, or both, that have a defined need for dental services. The criteria must include consideration of:
  - a. The number of dentists already providing dental services in the city or surrounding areas, or both;
  - b. Access to dental services in the city and the surrounding areas;
  - c. How the dentist will provide dental services to individuals on medical assistance or in a public health clinic, a practice with a focus on an underserved population, or a nonprofit dental clinic; and
  - d. The dentist's training in general dentistry or in a dental specialty and the extent to which such services are needed in the identified city or surrounding areas, or both.
2. As a term of receipt of funds under this chapter, a dentist shall accept medical assistance patients and assignments or provide dental services in a public health clinic, a practice with a focus on an underserved population, or a

nonprofit dental clinic. For purposes of a dentist selected for loan payment under this chapter who practices within fifteen miles [24.14 kilometers] of the city limits of one of the three largest cities in the state, to qualify to receive a yearly disbursement under this chapter during that year of obligated service, the dentist must have:

- a. Received dental medical payments of at least twenty thousand dollars in the form of medical assistance reimbursement; or
  - b. Practiced at least two full workdays per week at a public health clinic or at a nonprofit dental clinic that uses a sliding fee schedule to bill the nonprofit dental clinic's patients.
3. The ~~health council~~department of health and human services may consult with public and private sector entities in establishing criteria and evaluating needs based on the criteria.

**SECTION 89. AMENDMENT.** Section 43-28.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-28.1-05. Eligible loans.**

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

**SECTION 90. AMENDMENT.** Section 43-28.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**43-28.1-07. Contract obligation.**

The ~~state health council~~department of health and human services shall enter a contract with a selected dentist. The contract must provide the ~~state health council~~department of health and human services agrees to make payments of loan repayment funds to the selected dentist, subject to the dentist meeting the requirements and limitations established by the ~~state health council~~department of health and human services under this chapter.

**SECTION 91. AMENDMENT.** Section 43-28.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-28.1-08. Payment - Termination.**

1. The ~~state health council~~department of health and human services may not provide any loan repayment funds to a dentist under this chapter until the dentist has practiced at least six months on a full-time basis in the city or surrounding areas, or both, the ~~state health council~~department of health and human services has identified as having a defined need for dental services.
2. Except as otherwise provided, the ~~state health council~~department of health and human services shall make payments under this chapter at the conclusion

of each of the five twelve-month periods of service during which the dentist met the qualifying terms of the contract. The ~~state health council~~department of health and human services may make a prorated payment under this chapter if during the twelve-month period the dentist failed to meet the qualifying terms of the contract.

3. Payments under this chapter terminate upon the earlier of completion of five years as a participant in this loan repayment program or failure of the dentist to meet the qualifying terms under the contract.

**SECTION 92. AMENDMENT.** Section 43-28.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-28.1-09. Gifts, grants, and donations - Continuing appropriation.**

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

**SECTION 93. AMENDMENT.** Section 43-29.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-29.1-01. Loan repayment program - Veterinarians - Maximum amount of funds.**

Each year the ~~state health council~~department of health and human services, in consultation with the state board of animal health, shall select qualified applicants to participate in a loan repayment program, as provided for in this chapter. Each applicant must be a veterinarian and must agree to provide food animal veterinary medicine services to communities in this state. The selected applicants are eligible to receive up to eighty thousand dollars in loan repayment funds. The number of applicants that the ~~council~~department of health and human services may select for participation in the loan repayment program is limited only by the moneys available to support the program, as provided for in this chapter.

**SECTION 94. AMENDMENT.** Section 43-29.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-29.1-02. Loan repayment program - Veterinarians - Powers of ~~state health council~~department.**

The ~~state health council~~department of health and human services may:

1. Determine the eligibility and qualifications of an applicant for loan repayment funds under this chapter;
2. Identify communities that are in need of a veterinarian and establish a priority ranking for participation in the program by the selected communities;

3. Create and distribute a loan repayment application;
4. Determine the amount of the loan repayment funds for which an applicant may be eligible under this chapter and, in making this determination, examine any outstanding education loans incurred by the applicant;
5. Establish conditions regarding the use of the loan repayment funds;
6. Enter a nonrenewable contract with the selected applicant and the selected community to provide to the applicant funds for the repayment of education loans in exchange for the applicant agreeing to actively practice in the selected community;
7. Receive and use funds appropriated for the program;
8. Enforce any contract under the program;
9. Cancel a contract for reasonable cause;
10. Participate in federal programs that support the repayment of education loans incurred by veterinarians and agree to the conditions of the federal programs;
11. Accept property from an entity; and
12. Cooperate with the department of health and human services to effectuate this chapter.

**SECTION 95. AMENDMENT.** Subsection 1 of section 43-29.1-03 of the North Dakota Century Code is amended and reenacted as follows:

1. In establishing the criteria regarding eligibility for loan repayment funds under this chapter, the ~~state health council~~department of health and human services shall consider the applicant's:
  - a. Training in food animal veterinary medicine, ability, willingness to engage in food animal veterinary medicine, and the extent to which such services are needed in a selected community;
  - b. Commitment to serve in a community that is in need of a veterinarian;
  - c. Compatibility with a selected community;
  - d. Date of availability for service to the selected community; and
  - e. Competence and professional conduct.

**SECTION 96. AMENDMENT.** Section 43-29.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-29.1-04. Community selection criteria.**

1. In selecting a community with a defined need for the services of a veterinarian, the ~~health council~~department of health and human services shall consider:
  - a. The size of the community and give priority:

- (1) First to rural communities having a population under five thousand;
  - (2) Second to communities having a population between five thousand and ten thousand; and
  - (3) Third to communities having a population greater than ten thousand.
- b. The number of veterinarians practicing in the community and the surrounding area.
  - c. The access by residents to veterinarians practicing in the community and the surrounding area.
  - d. The degree to which residents support the addition of a veterinarian within the community.
2. The ~~state health council~~department of health and human services shall give priority for participation to a community that demonstrates a need for a veterinarian.
  3. In evaluating communities for participation in this program, the ~~state health council~~department of health and human services may consult with public and private entities and visit the communities.

**SECTION 97. AMENDMENT.** Section 43-29.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-29.1-05. Eligible loans.**

The ~~state health council~~department of health and human services may provide for loan repayment funds to a veterinarian who has received an education loan. The ~~council~~department of health and human services may not provide funds for the repayment of a loan that is in default at the time of the application. The amount of the repayment must be related to the veterinarian's outstanding education loans.

**SECTION 98. AMENDMENT.** Section 43-29.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-29.1-06. Release from contract obligation.**

1. The ~~state health council~~department of health and human services shall release a veterinarian from the veterinarian's loan repayment contract without penalty if:
  - a. The veterinarian has completed the service requirements of the contract;
  - b. The veterinarian is unable to complete the service requirement of the contract because of a permanent physical disability;
  - c. The veterinarian demonstrates to the ~~state health council~~department of health and human services extreme hardship or shows other good cause justifying the release; or
  - d. The veterinarian dies.

2. A decision by the ~~state health council~~department of health and human services not to release a veterinarian from the veterinarian's loan repayment contract without penalty is reviewable by district court.

**SECTION 99. AMENDMENT.** Subsection 5 of section 43-29.1-07 of the North Dakota Century Code is amended and reenacted as follows:

5. If any moneys remain in the state veterinary loan repayment account after the ~~health council~~department of health and human services has met all statutory and contractual obligations established under this chapter, the ~~health council~~department of health and human services may use the moneys to increase the number of veterinarians participating in the loan repayment program.

**SECTION 100. AMENDMENT.** Section 43-29.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-29.1-08. Gifts, grants, and donations - Continuing appropriation.**

1. The ~~state health council~~department of health and human services may accept any conditional or unconditional gifts, grants, and donations for the purpose of providing moneys for the repayment of veterinarians' education loans. However, if an entity desires to provide moneys to the ~~state health council~~department of health and human services for the location of a veterinarian in or at a specific site, the entity shall commit to provide the full amount required under this program for a period of four years.
2. The ~~state health council~~department of health and human services may contract with a public or private entity and may expend any moneys available to the ~~council~~department of health and human services to obtain matching funds for the purposes of this chapter.
3. All moneys received as gifts, grants, or donations under this section are appropriated on a continuing basis to the ~~state health council~~department of health and human services for the purpose of increasing the number of veterinarians participating in the loan repayment program under this chapter.

**SECTION 101. AMENDMENT.** Section 43-34-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-34-02. Composition of the board.**

There is hereby created the state board of examiners for nursing home administrators which consists of nine members.

1. Two members of the board must be the state health officer and the ~~executive director~~commissioner of the department of health and human services or the members' designees.
2. One member of the board must be a physician appointed to the board for a three-year term by the governor.
3. One member of the board must be a hospital administrator appointed to the board for a three-year term by the governor.

4. Four members of the board must be licensed nursing home administrators appointed to the board for three-year terms by the governor.
5. One member of the board must be a nurse appointed to the board for a three-year term by the governor.
6. Any vacancies occurring in the appointments made by the governor must be filled by the governor.
7. Appointive members may be removed by the governor for cause after due notice and hearing.

**SECTION 102. AMENDMENT.** Section 43-38-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-38-01. Definitions.**

In this chapter unless the context or subject matter otherwise requires:

1. "Department" means the department of health and human services.
2. "Electrologist" means a qualified and licensed person proficient in the removal of hair by means of the electric needle.
- ~~2-3.~~ "Electrolysis" means the removal of superfluous hair by use of the electric needle or electronic process.
- ~~3-4.~~ "Electronic hair removal technician" means a qualified and licensed person proficient in the removal of hair by means of an electronic process other than the electric needle.
4. ~~"State health council" means the state health council as defined in chapter 23-01.~~

**SECTION 103. AMENDMENT.** Section 43-38-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-38-02. Electrologist and electronic hair removal technician licensure - Duties of state health council.**

The ~~state health council~~department shall issue an electrologist's or electronic hair removal technician's license. The annual license must be determined annually ~~by the council~~ but may not exceed fifty dollars for new licenses and not exceed twenty-five dollars for relicensure.

**SECTION 104. AMENDMENT.** Section 43-38-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-38-03. Rulemaking authority of department of health and human services.**

1. ~~The department of health and human services shall establish standards, rules, and regulations that are found necessary for the maintenance of public health, including sanitation and disease control. The department of health and human services has the following powers:~~
4. a. To establish minimum age levels.

2. b. To establish education and training levels for electrologists and electronic hair removal technicians.
  - ~~3. c. To issue, deny, suspend, or revoke licenses.~~
  4. d. To develop application and licensure forms.
  - ~~5. To delegate the administration of the program to the state health officer, subject to such provisions as the council may make for appeal to it.~~
  6. e. To promulgate such requirements as may be found necessary to carry out the intent of this chapter.
2. All electrologists and electronic hair removal technicians practicing in North Dakota prior to July 1, 1979, may, without examination, be issued a license by the department of health and human services upon proof, satisfactory to the department, of having met the qualifications.

**SECTION 105. AMENDMENT.** Subsection 1 of section 43-43-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Advisory board" means the following or their appointed agents: state health officer or designee as chairperson, the commissioner of the North Dakota department of agriculture, and the president of the North Dakota environmental health association. The state health officer or designee shall appoint one agent of a district or local health unit environmental health practitioner and one consumer.

**SECTION 106. AMENDMENT.** Section 43-43-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-43-03. Advisory board duties and compensation.**

The advisory board shall meet at the request of the state health officer or designee to assist in implementation of duties as defined in section 43-43-04. The advisory board must be reimbursed for any necessary expenses, but shall serve without further compensation except as may be authorized and fixed by the department of health and human services by rule.

**SECTION 107. AMENDMENT.** Section 43-43-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-43-05. Exception from requirements.**

The ~~state health officer~~department of health and human services must license all persons actually engaged in the practice of environmental health in this state upon receipt of proof of a bona fide practice in this state; however, the applicant must file an application and present such proof prior to July 1, 1986, or become subject to licensure requirements of this chapter.

<sup>137</sup> **SECTION 108. AMENDMENT.** Subsection 10 of section 50-01.1-06 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>137</sup> Section 50-01.1-06 was also amended by section 5 of House Bill No. 1046, chapter 417.

10. Are the custodian designees of the ~~executive director~~commissioner of the department for any child in the custody of the department.

**SECTION 109. AMENDMENT.** Section 50-06-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-01.1. Department of health and human services to be substituted for public welfare board of North Dakota and social service board of North Dakota, members of board, ~~executive director~~commissioner, and department of human services.**

When the terms "public welfare board of North Dakota", "social service board of North Dakota", "executive director of the public welfare board", "executive director of the social service board", "department of human services", or "executive director of the department of human services", "member of the public welfare board", or "member of the social service board", or any derivative of those terms which, when used in context indicates an intention to refer to those persons or that board, appear in the North Dakota Century Code, the term "department of health and human services", or the term "~~executive director~~commissioner of the department of health and human services", as the case may be, must be substituted therefor. It is the intent of the legislative assembly that the department of health and human services must be substituted for, shall take any action previously to be taken by, and shall perform any duties previously to be performed by the public welfare board of North Dakota, by the social service board of North Dakota, by the department of human services, or by the state department of health. The legislative council may replace references to the "department of human services" or "executive director of the department of human services" or any derivatives of those terms with "department of health and human services" or "executive director of the department of health and human services" in any measure enacted by the sixty-seventh legislative assembly. The legislative council may replace references to the "executive director of the department of human services" or any derivatives of those terms with "commissioner of the department of health and human services or designee" in any measure enacted by the sixty-eighth legislative assembly.

**SECTION 110. AMENDMENT.** Section 50-06-01.3 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-01.3. Appointment of ~~executive director~~commissioner - Compensation - Deputy.**

1. The governor shall appoint the ~~executive director~~commissioner of the department who shall serve at the pleasure of the governor. The ~~executive director~~commissioner shall take the oath of office required of civil officers by section 44-01-05. The ~~executive director~~commissioner is entitled to receive compensation in the amount established by the governor within the limits of legislative appropriations.
2. The commissioner of the department may appoint a deputy commissioner.
3. The commissioner of the department may delegate any of the commissioner's authority as the commissioner determines necessary.

<sup>138</sup> **SECTION 111. AMENDMENT.** Section 50-06-01.4 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-01.4. Structure of the department.**

1. The department includes the state hospital, the regional human service centers, a vocational rehabilitation unit, public health division, and other units or offices and administrative and fiscal support services as the ~~executive-director~~commissioner of the department determines necessary. The department must be structured to promote efficient and effective operations and, consistent with fulfilling its prescribed statutory duties, shall act as the official agency of the state in the discharge of the following functions not otherwise by law made the responsibility of another state agency:
  - a. Administration of programs for children and families, including adoption services and the licensure of child-placing agencies, foster care services and the licensure of foster care arrangements, certification of shelter care services, child protection services, children's trust fund, licensure of early childhood programs, refugee services, in-home community-based services, quality control, and administration of the interstate compacts on the placement of children and juveniles.
  - b. Administration of programs for individuals with developmental disabilities, including licensure of facilities and services, and the design and implementation of a community-based service system for persons in need of habilitation.
  - c. Administration of aging service programs, including nutrition, transportation, advocacy, social, ombudsman, recreation, and related services funded under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.], home and community-based services, licensure of adult foster care homes, and the committee on aging.
  - d. Administration of behavioral health programs, including:
    - (1) ~~A policy division responsible for~~ reviewing and identifying service needs and activities in the state's behavioral health system in an effort to ensure health and safety, access to services, and quality of services; establishing quality assurance standards for the licensure of substance use disorder program services and facilities; ~~and~~ providing policy leadership in partnership with public and private entities; and
    - (2) ~~A service delivery division responsible for~~ providing chronic disease management, regional intervention services, and twenty-four-hour crisis services for individuals with behavioral health disorders.
  - e. Administration of economic assistance programs, including temporary assistance for needy families, the supplemental nutrition assistance program, home energy assistance, child care assistance, refugee assistance, work experience, work incentive, and quality control.
  - f. Administration of medical service programs, including medical assistance for children's health insurance program, Medicaid waivers, early and

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<sup>138</sup> Section 50-06-01.4 was also amended by section 1 of House Bill No. 1048, chapter 420.

- periodic screening, diagnosis and treatment, utilization control, autism services, and claims processing.
- g. Administration of general assistance.
  - h. Administration of child support.
  - i. Administration of program, services, and licensing outlined in title 23 and other previous duties of the state department of health and state health council.
2. The ~~executive director~~commissioner of the department or commissioner's designee shall consult with and maintain a close working relationship with the department of corrections and rehabilitation and the superintendents of the school for the deaf and the North Dakota vision services - school for the blind to develop programs for individuals with developmental disabilities; and with the superintendent of public instruction to maximize the use of resource persons in regional human service centers in the provision of special education services. The ~~executive director~~commissioner of the department or commissioner's designee shall also maintain a close liaison with human service zones.
  3. By August 1, 2019, the department shall establish a template for the development of human service zone plans, including process and content requirements, access point expectations, client grievances procedures, human resources, and locally funded programs or services and how those services will be addressed.
  4. The department shall develop, with assistance from the North Dakota association of counties, a process for consultation and technical assistance for human service zone working groups by August 1, 2019.

<sup>139</sup> **SECTION 112. AMENDMENT.** Subsection 3 of section 50-06-05.3 of the North Dakota Century Code is amended and reenacted as follows:

3. Each human service center must have a human services advisory group consisting of the human service zone directors of the region served, the public health directors of the region served, two current county commissioners appointed by the ~~executive director~~commissioner of the department or commissioner's designee, and five additional members appointed by the ~~executive director~~commissioner of the department or commissioner's designee. Each advisory group member must be a resident of the region the member is appointed to serve. The term of office for each appointed member is two years and arranged so that the term of three of the appointed members expires at the end of the first year and the term of the remaining four appointed members expires at the end of the second year, except for those first members appointed, three members shall serve a one-year term and four members shall serve a two-year term. The ~~director~~commissioner of the department or commissioner's designee shall select the appointed members of each human service advisory group on the basis of population of the counties in the region served by the human service center. Each county in the region must be represented by at least one member on the human service advisory group. To the extent possible, appointed membership of the advisory

<sup>139</sup> Section 50-06-05.3 was also amended by section 4 of Senate Bill No. 2083, chapter 272.

group must reflect regional interests in the fields of developmental disabilities, social services, mental health, and substance use disorders. The ~~executive director~~commissioner of the department or ~~commissioner's designee~~ shall appoint a chairman for each advisory group from the membership of the advisory group. The ~~executive director~~commissioner of the department or ~~commissioner's designee~~ shall fill a vacancy occurring within an advisory group for other than the expiration of a term in the same manner as original appointments, except that appointments must be made only for the unexpired term. The department shall compensate appointed members of a human service advisory group at the rate of forty-five dollars per day, not to exceed twenty-five days in any one year. The department also shall pay members for mileage and actual expenses incurred in attending meetings and in the performance of their official duties in the amounts provided by law for other state officers.

**SECTION 113. AMENDMENT.** Section 50-06-05.5 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-05.5. Director of regional center - Medical director.**

Each regional human service center must be headed by a regional director appointed by the ~~executive director~~commissioner of the department. The regional director must be accountable to the ~~executive director~~commissioner of the department or the ~~director's~~commissioner's designee. Each regional director may employ the staff necessary to discharge the center's responsibilities. A regional director, subject to the approval of the ~~executive director~~commissioner of the department or the ~~director's~~commissioner's designee, and within the limit of legislative appropriations, may make contractual arrangements with public or private agencies or with individuals and organizations to discharge the regional human service center's service delivery responsibilities. Each regional director shall hire a qualified medical professional who must be designated as the medical director of the center. The medical director is responsible for coordinating mental health and medically related services. The medical director's position may be part time or full time as determined appropriate by the regional director, with the concurrence of the ~~executive director~~commissioner of the department or the ~~director's~~commissioner's designee. As used in this section, "qualified medical professional" means a board-eligible or board-certified psychiatrist, when such an individual can be employed, and when this is not possible, an individual possessing at least a medical degree.

**SECTION 114. AMENDMENT.** Section 50-06-05.8 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-05.8. Department to assume costs of human services.**

The department shall pay each human service zone's expenses for administering human services for calendar years after December 31, 2019, based on the payment amount calculated for each human service zone under chapter 50-35. The ~~executive director~~commissioner of the department or ~~commissioner's designee~~ shall authorize expenditures from the human service finance fund to reimburse the department for the department's costs of providing human services that historically have been provided by a county or human service zone, or for a new service or program based on federal or state law.

**SECTION 115. AMENDMENT.** Section 50-06-06.6 of the North Dakota Century Code is amended and reenacted as follows:

### **50-06-06.6. Department may lease real and personal property.**

The ~~executive director~~commissioner of the department or commissioner's designee may lease surplus farm and pastureland at the state hospital and the life skills and transition center. The ~~executive director~~commissioner or designee also may enter into further leases of real or personal property at the life skills and transition center or the state hospital upon a specific finding that the granting of each such leasehold interest will result in a net economic gain for the department, taking into account all identifiable costs. Any lease of space for the purpose of providing child care services must meet requirements as determined by the department. The ~~executive director~~commissioner of the department or commissioner's designee may prescribe the terms and conditions of any leases entered into pursuant to this section and may renew existing leases. Any lease entered into must be subject to renewal or cancelable each biennium.

**SECTION 116. AMENDMENT.** Section 50-06-30 of the North Dakota Century Code is amended and reenacted as follows:

#### **50-06-30. Interagency agreement between the department of health and human services and the department of corrections and rehabilitation.**

The ~~executive director~~commissioner of the department or commissioner's designee and the director of the department of corrections and rehabilitation may amend the interagency agreement entered under this section which became effective August 1, 2007. The amended agreement must provide that the department of corrections and rehabilitation shall train, consult, and assist the department of health and human services with the provision and enforcement of safety and security procedures at the state hospital for all patients at the state hospital, including those committed to the state hospital under chapter 25-03.1 or placed at the state hospital for evaluation or civil commitment and treatment under chapter 25-03.3 and for all staff, visitors, and volunteers at the state hospital. The amended interagency agreement must provide that the ~~executive director~~commissioner of the department or commissioner's designee shall continue to be responsible for the custody and care of patients at the state hospital, including those committed to the state hospital under chapter 25-03.1 or placed at the state hospital for evaluation or civil commitment and treatment under chapter 25-03.3, including responsibility for all assessments, evaluations, and treatment required under chapter 25-03.3, the provision of all necessary staffing, including maintenance staff, and the provision of all daily care and health care.

**SECTION 117. AMENDMENT.** Section 50-06-31 of the North Dakota Century Code is amended and reenacted as follows:

#### **50-06-31. Report to legislative council - Individuals committed to state hospital.**

Before March first of each even-numbered year, the department shall report to the legislative council on services provided by the department of corrections and rehabilitation relating to individuals at the state hospital who have been committed to the care and custody of the ~~executive director~~commissioner of the department or commissioner's designee.

<sup>140</sup> **SECTION 118. AMENDMENT.** Section 50-06-32 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>140</sup> Section 50-06-32 was repealed by section 3 of Senate Bill No. 2335, chapter 69.

**50-06-32. 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~~commissioner of the department, or the ~~director's~~commissioner's designee;
  - (3) The superintendent of public instruction, or the superintendent'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 behavioral specialist;
  - (5) A licensed teacher with expertise in the area of autism spectrum disorder;
  - (6) An occupational therapist;
  - (7) A representative of a health insurance company doing business in this state;
  - (8) A representative of a licensed residential care facility that provides care and services to individuals with autism spectrum disorder;
  - (9) A representative who is an enrolled member of a federally recognized Indian tribe;
  - (10) An adult self advocate with autism spectrum disorder;
  - (11) A parent of a child with autism spectrum disorder;
  - (12) A family member of an adult with autism spectrum disorder; and
  - (13) A member of the legislative assembly.
2. The ~~director~~commissioner of the department, or the ~~director's~~commissioner'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 119. AMENDMENT.** Subsection 1 of section 50-06-43.2 of the North Dakota Century Code is amended and reenacted as follows:

1. The commission on juvenile justice is composed of:
  - a. Three members of the house of representatives, two of whom must be selected by the majority leader of the house of representatives and one of whom must be selected by the minority leader of the house of representatives;
  - b. Three members of the senate, two of whom must be selected by the majority leader of the senate and one of whom must be selected by the minority leader of the senate;
  - c. The governor, or the governor's designee;
  - d. The superintendent of public instruction, or the superintendent's designee;
  - e. The ~~executive director~~commissioner of the department, or the ~~executive director's~~commissioner's designee;
  - f. The director of the department of corrections and rehabilitation's division of juvenile services, or the director's designee;
  - g. The executive director of the Indian affairs commission, or the executive director's designee;
  - h. A director of juvenile court services, appointed by the chief justice of the supreme court;
  - i. A representative from the commission on legal counsel for indigents; and
  - j. The following members appointed by the governor:
    - (1) A state's attorney;
    - (2) A representative of a children's advocacy center; and
    - (3) A representative of local law enforcement.

**SECTION 120. AMENDMENT.** Subsection 4 of section 50-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Rules" means rules adopted by the division executive director with the approval of the ~~executive director~~commissioner of the department or commissioner's designee.

**SECTION 121. AMENDMENT.** Subsection 7 of section 50-10.1-03 of the North Dakota Century Code is amended and reenacted as follows:

7. Carry out any activities consistent with the requirements of this chapter, including the delegation to regional or volunteer community long-term care ombudsmen of any duties imposed by this chapter, which the ~~executive director~~commissioner of the department or commissioner's designee deems appropriate.

**SECTION 122. AMENDMENT.** Subsection 1 of section 50-11.1-25 of the North Dakota Century Code is amended and reenacted as follows:

1. The North Dakota early childhood 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~~commissioner of the department, or the ~~director's~~commissioner'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 commissioner of commerce, or the commissioner's designee;
  - h. The chairman of the senate education committee, or the chairman's designee;
  - i. The chairman of the house of representatives education committee, or the chairman's designee;
  - j. The chairman of the senate human services committee, or the chairman's designee;
  - k. The chairman of the house of representatives human services committee, or the chairman's designee; and
  - l. The following individuals appointed by the governor:
    - (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) An individual representing a non-religious-based provider of a four-year old program;
- (5) An individual representing a religious-based provider of a four-year old program;
- (6) An individual representing a center-based licensed child care provider;
- (7) An individual representing a home-based licensed child care provider;
- (8) An individual representing a reservation-based head start program;
- (9) An elected member of a school board;
- (10) The parent of a child not yet enrolled in elementary school;
- (11) The parent of a child with disabilities not yet enrolled in elementary school; and
- (12) An individual representing children with disabilities.
- (13) A special education director.

**SECTION 123. AMENDMENT.** Section 50-21-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-21-02. Administration of revolving fund.**

The revolving fund and loans made therefrom must be supervised and administered by the Bank of North Dakota. All applications for loans under the provisions of this chapter for the construction of nursing homes or combination nursing homes and basic care facilities must be made to the department of health and human services, which department is authorized, ~~subject to the approval of the North Dakota health council,~~ to promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter. All applications for the construction of basic care facilities must be made to the department of health and human services, which department shall promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter. Applications approved by the department of health and human services ~~and the North Dakota health council~~ must be forwarded to the Bank of North Dakota. Upon approval of such application by the president of the Bank of North Dakota, loans must be granted by the Bank of North Dakota from the revolving fund in accordance with the provisions of this chapter.

**SECTION 124. AMENDMENT.** Section 50-21-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-21-04. Standards - Administration procedure.**

The department of health and human services shall establish standards of construction which must be followed by all applicants receiving loans of funds for the construction of nursing homes or combination nursing homes and basic care facilities. The department of health and human services shall establish standards of construction which must be followed by all applicants for loans for the construction of basic care facilities. ~~The health council~~department of health and human services, in the case of the construction of nursing homes or basic care facilities or combination nursing homes and basic care facilities, shall approve all building plans and

specifications for any facilities to be constructed in whole or in part with loans of funds provided under the provisions of this chapter prior to the disbursement of any such funds. Administrative procedures established by the department of health and human services must, except to construction standards, be in general in accordance with the procedures established for the administration of the federal grant-in-aid program for similar purposes under the Hill-Burton Act, or federal acts supplemental thereto.

<sup>141</sup> **SECTION 125. 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 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~~commissioner of the department or commissioner's designee;
  - 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~~commissioner of the department or commissioner's designee;
  - e. One individual who represents consumer interests, appointed by the governor;
  - 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. 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

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<sup>141</sup> Section 50-24.6-02 was also amended by section 1 of Senate Bill No. 2156, chapter 441.

unexpired term from the appropriate board category as provided under subsection 2. The ~~executive director~~commissioner of the department or commissioner's designee 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 representatives are nonvoting board 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 126. AMENDMENT.** Subsection 3 of section 50-25.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

3. In every case of alleged institutional child abuse or neglect, the state child protection team shall make a determination whether child abuse or neglect is indicated. Upon a determination that institutional child abuse or neglect is indicated, the state child protection team promptly shall make a written report of the determination. When a report includes an allegation or report of institutional child abuse and neglect as defined in section 50-25.1-02, the state child protection team promptly shall notify the ~~executive director~~commissioner of the department or commissioner's designee of the determination. Notwithstanding section 50-25.1-11, the department shall notify the superintendent of public instruction, the school district administrator, and the president or chairman of the school board or a private school's governing body or entity if the subject of the report is a public or private school.

**SECTION 127. AMENDMENT.** Subsection 1 of section 50-28-04 of the North Dakota Century Code is amended and reenacted as follows:

1. The ~~executive director~~commissioner of the department or commissioner's designee shall:
  - a. Execute one or more interstate compacts on behalf of this state, not inconsistent with this chapter, to implement the purposes of this chapter; and
  - b. Designate a compact administrator and a deputy compact administrator as the ~~executive director~~commissioner or designee deems necessary.

**SECTION 128. AMENDMENT.** Subsection 1 of section 50-28-05 of the North Dakota Century Code is amended and reenacted as follows:

1. This state's joinder of the compact is effective upon execution of the compact by the ~~executive director~~commissioner of the department or commissioner's designee.

<sup>142</sup> **SECTION 129. AMENDMENT.** Subsection 2 of section 50-35-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Director" means the ~~executive director~~commissioner of the department or the ~~executive director's~~commissioner's designee.

**SECTION 130. AMENDMENT.** Section 54-44.3-31 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.3-31. Political subdivision may request to be exempted from state merit system.**

A political subdivision subject to the merit system under this chapter may file a request with the division and the ~~executive director~~commissioner of the department of health and human services ~~or commissioner's designee~~ to be exempted from the merit system. The request must describe a plan and policy that assures the political subdivision has developed a merit system plan that meets federal standards for personnel administration. The division and the ~~executive director~~commissioner of the department of health and human services ~~or commissioner's designee~~ shall authorize the political subdivision plan within sixty days of receiving a request under this section if the plan and policies meet federal requirements. If the division and the ~~executive director~~commissioner of the department of health and human services ~~or commissioner's designee~~ determine that the proposed plan and policies fail to meet the federal requirements, the division and the ~~executive director~~commissioner ~~or designee~~ shall deny the request and notify the requester of the specific reasons for the denial.

**SECTION 131. 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, 4.1-05-02, 4.1-26-02, 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~~, 23.1-01-02, 36-01-01, 37-18.1-01, 50-06-05.6, 54-34.3-10, 54-54-02, 55-01-01, and 61-02-04, 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.
  - f. The advisory board of directors to the Bank of North Dakota.
  - g. The pardon advisory board.
  - h. The state parole board.

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<sup>142</sup> Section 50-35-01 was also amended by section 7 of House Bill No. 1046, chapter 417.

- i. The state board of public school education.
- j. The education standards and practices board.
- k. The board of trustees of the teachers' fund for retirement.
- l. The state game and fish advisory board.
- m. ~~The health council.~~
- n. The environmental review advisory council.
- ~~o-n.~~ The board of animal health.
- ~~p-o.~~ The administrative committee on veterans' affairs.
- ~~q-p.~~ The committee on aging.
- ~~r-q.~~ The commission on the status of women.
- ~~s-r.~~ The North Dakota council on the arts.
- ~~t-s.~~ The state historical board.
- ~~u-t.~~ The state water commission.

**SECTION 132. AMENDMENT.** Section 54-46-13 of the North Dakota Century Code is amended and reenacted as follows:

**54-46-13. Rules for state and human service zone records - Administrator to adopt.**

The administrator shall adopt rules in accordance with chapter 28-32 for state and human service zone records. The rules adopted by the administrator must be consistent with records retention requirements imposed by federal law with respect to those records. The administrator, prior to adoption, amendment, or repeal of rules concerning state and human service zone records, shall consult with the ~~executive director~~commissioner of the department of health and human services ~~or commissioner's designee~~.

**SECTION 133. AMENDMENT.** Subsection 1 of section 54-59-25 of the North Dakota Century Code is amended and reenacted as follows:

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~~commissioner of the department of health and human services or the ~~executive director's commissioner's~~ designee, the chairman of the house human services committee and the chairman of the senate human services committee or if either or both of them are unwilling or unable to serve then the chairman of the legislative management shall appoint a replacement who is a member of the same legislative chamber as the individual being replaced, and individuals appointed by the governor to represent a broad range of public and private health information technology stakeholders. A committee member who is not an ex officio member, designee of an ex officio member, state employee, or

legislator is entitled to mileage and expenses as provided by law for state officers and employees, to be paid by the health information technology office. A committee member who is an ex officio member, designee of an ex officio member, state employee, or legislator is entitled to receive that member's regular salary and receive mileage and expenses, to be paid by the employing agency.

**SECTION 134. AMENDMENT.** Section 54-59-33 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-33. Statewide longitudinal data system committee - Membership.**

1. The statewide longitudinal data system committee consists of:
  - a. The commissioner of the board of higher education or the commissioner's designee;
  - b. The superintendent of public instruction or the superintendent's designee;
  - c. The chief information officer or the officer's designee;
  - d. The director of the department of career and technical education or the director's designee;
  - e. The director of job service North Dakota or the director's designee;
  - f. The commissioner of commerce or the commissioner's designee;
  - g. The ~~executive director~~commissioner of the department of health and human services or the ~~director's~~commissioner's designee;
  - h. The executive director of the North Dakota council of educational leaders or the executive director's designee;
  - i. The director of the North Dakota workforce development council or the director's designee; and
  - j. Two members of the legislative assembly appointed by the chairman of the legislative management.
2. The governor shall designate the chairman of the committee.

**SECTION 135. 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~~department of environmental quality 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 136. REPEAL.** Sections 23-01-01, 23-01-06, and 23-07-07 of the North Dakota Century Code are repealed.

Approved April 10, 2023

Filed April 11, 2023

## CHAPTER 230

### SENATE BILL NO. 2227

(Senators Lee, Dever, Hogan)  
(Representatives Nelson, M. Ruby, Weisz)

AN ACT to amend and reenact sections 23-01-02 and 23-01-03 of the North Dakota Century Code, relating to the membership and duties of the health council.

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

**SECTION 1. AMENDMENT.** Section 23-01-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **23-01-02. Health council - Members, terms of office, vacancies, compensation, officers, meetings.**

1. ~~The health council shall assure the coordination of the health division with all other health activities of the state. The health council consists of ninetwelve members appointed by the governor including four persons from the health care field, and five persons representing consumer interests. The governor may select members to the council from recommendations submitted by trade, professional, and consumer organizations. On the expiration of the term of any member, the governor, in the manner provided by this section, shall appoint for a term of three years, persons to take the place of members whose terms on the council are about to expire. The officers of the council must be elected annually. Any state agency may serve in an advisory capacity to the health council at the discretion of the council. The council shall meet at least twice each year and at other times as the council or its chairman may direct. The health council shall have as standing committees any committees the council may find necessary. The chairman of the council shall select the members of these committees. The members of the council are entitled to receive compensation at the rate set for a member of the legislative assembly under subsection 1 of section 54-03-20 and their necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09 while attending council meetings or in the performance of any special duties as the council may direct. The per diem and expenses must be audited and paid in the manner in which the expenses of state officers are audited and paid. The compensation provided for in this section may not be paid to any member of the council who received salary or other compensation as a regular employee of the state, or any of its political subdivisions, or any institution or industry operated by the state:~~
  - a. One member representing tribal health, appointed by the director of the Indian affairs commission for a term of at least one year.
  - b. One member representing the university of North Dakota school of medicine and health sciences, appointed by the dean of the school for a term of at least one year.
  - c. One member representing the university of North Dakota, appointed by the president of the university for a term of at least one year.

- d. One member representing North Dakota state university, appointed by the president of the university for a term of at least one year.
  - e. One local health officer from a public health unit, appointed by the state health officer for a term of at least one year.
  - f. Seven members appointed by the state health officer as provided under this subdivision for terms of three years. The state health officer shall identify statewide entities representing each of the following interests and shall request each entity submit the name of one individual to represent the entity.
    - (1) An entity representing pharmacists.
    - (2) An entity representing physicians.
    - (3) An entity representing hospitals.
    - (4) An entity representing public health unit administrators.
    - (5) An entity representing nurses.
    - (6) An entity representing long-term care facilities.
    - (7) An entity representing dietitians.
2. Each member of the health council shall serve until the member's successor is appointed. If a member ceases to represent the entity the member is appointed to represent, the member is no longer qualified to serve and must be replaced.
  3. The council shall elect from its membership a presiding officer. The state health officer shall serve as executive secretary of the health council. The executive secretary does not have voting privileges. The council shall meet no fewer than two times per year and shall meet at the call of the presiding officer and at the request of the state health officer.
  4. At the request of the health council, a state agency may serve in an advisory capacity to the council.
  5. The health council may appoint standing committees as determined necessary. The presiding officer shall select the members of any standing committee.
  6. A member of the health council is entitled to receive per diem at the rate set for a member of the legislative assembly under subsection 1 of section 54-03-20 and necessary mileage and travel expenses as provided under sections 44-08-04 and 54-06-09 while attending council meetings or in the performance of any special duties as the council may direct. To the extent a member of the council receives salary or other compensation from the state or a political subdivision, that member is not eligible to receive per diem or reimbursement under this subsection.

**SECTION 2. AMENDMENT.** Section 23-01-03 of the North Dakota Century Code is amended and reenacted as follows:

**23-01-03. Powers and duties of the health council.**

The health council shall:

1. Fix, subject to the provisions of section 23-01-02, the time and place of the meetings of the council.
2. Make regulations for the government of the council and its officers and meetings.
3. ~~Establish~~Collaborate and advise in the establishment of standards, rules, and regulations, which are found necessary for the maintenance of public health, including sanitation and disease control.
4. ~~Provide for~~Collaborate and support the development, ~~establishment, and enforcement of~~ basic standards for hospitals and related medical institutions which render medical and nursing care, and for the construction and maintenance of ~~such~~the institutions, ~~such~~ standards to cover matters pertaining to sanitation, building construction, fire protection measures, nursing procedures, and preservation of medical records. ~~No regulation~~A rule may not be adopted with respect to building construction of existing medical hospitals or related medical institutions unless the ~~regulation~~rule relates to safety factors or the hospital or related medical institution changes the scope of service in such a way that a different license is required from the department pursuant to rules adopted under chapter 23-16.
5. Hold hearings on all matters brought before ~~it~~the council by applicants and licensees of medical hospitals with reference to the denial, suspension, or revocation of licenses and make appropriate determination ~~as specified herein~~regarding these matters.

~~The council may direct the state health officer to do or cause to be done any or all of the things which may be required in the proper performance of the various duties placed upon the department of health and human services~~

6. Inform and advise the governor, department of health and human services, legislative assembly, and North Dakotans on public health issues that are important to the needs of North Dakotans, and in the event of a public health emergency.
7. Monitor progress on the state public health strategic plan and advocate for evidence-based practices and policies necessary to improve the health of North Dakotans.
8. In consultation with the state health officer and other agencies, associations, and institutions represented on the health council, study and make recommendations regarding the strategic plan and programs of the health division of the department of health and human services. The recommendation may address public health education and training, factors influencing the practice environment for health care professionals, access to health care, and patient safety.
9. As the health council determines appropriate, consult with an individual or entity in performing the council's duties under this section.

Filed April 26, 2023

## CHAPTER 231

### HOUSE BILL NO. 1045

(Human Services Committee)

(At the request of the Department of Health and Human Services)

AN ACT to amend and reenact section 23-01-37 of the North Dakota Century Code, relating to a life safety survey process of any health care facility licensed by the department of health and human services.

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

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

**23-01-37. Survey program - Health care facilities construction or renovation projects - Innovation waivers - Continuing appropriation.**

1. The department of health and human services shall conduct a life safety survey process for all health care facilities licensed by ~~the division of health facilities~~ of the department of health and human services during and at the conclusion of a construction, renovation, or construction and renovation project.
  - a. In conducting a survey under this section, if the department uses a third party to review construction and renovation plans, the licensed provider shall negotiate and approve the price of the review services, the department shall contract with the third party, and the licensed provider shall pay the department for the review services.
  - b. The department shall deposit in the department's operating account any payments received from a licensed provider under subdivision a. There is appropriated to the department on a continuing basis any funds deposited under subdivision a for the purpose of paying a third-party reviewer.
2. The department of health and human services 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 of health and human services shall make an initial determination on a construction, renovation, or construction and renovation project of:
  - a. No more than one million dollars within twenty-eight days of receipt of a complete application;
  - b. More than one million dollars but no more than four million dollars within forty-two days of receipt of a complete application; ~~and~~

- c. More than four million dollars, and less than fifteen million dollars, within fifty-six days of receipt of a complete application; and
  - d. More than fifteen million dollars by notifying the applicant of the time the department will require to complete the review, allowing the applicant to determine whether to use a third-party reviewer.
4. Following an initial determination under subsection 3, the department of health and human services shall make any followup determination on a construction, renovation, or construction and renovation project within fourteen days of receipt of the licensed provider's response to the initial determination.
  5. The department of health and human services may approve a request for a waiver of a state law or rule relating to an innovative construction, renovation, or construction and renovation project if the lack of compliance does not adversely affect health or safety.
  6. The department of health and human services 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.

Approved April 10, 2023

Filed April 11, 2023

## CHAPTER 232

### HOUSE BILL NO. 1297

(Representatives Kasper, Koppelman, Prichard, Rohr, D. Ruby, M. Ruby, Steiner,  
VanWinkle)  
(Senators Boehm, Clemens, Myrdal)

AN ACT to create and enact a new section to chapter 23-02.1 of the North Dakota Century Code, relating to correction or amendment of birth records.

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

**SECTION 1.** A new section to chapter 23-02.1 of the North Dakota Century Code is created and enacted as follows:

##### **Birth records - Amendments and corrections - Sex change.**

1. The sex designation on a birth record of an individual born in this state may not be amended under section 23-02.1-25 due to a gender identity change.
2. The sex designation on a birth record of an individual born in this state may not be amended or corrected under section 23-02.1-25 unless:
  - a. The sex of the individual was listed incorrectly on the original birth record as a result of a scrivener's error or data entry error;
  - b. The sex of the individual was misidentified on the original birth record and the request for correction is accompanied by a copy of the results of chromosomal, molecular, karyotypic, DNA, or genetic testing that identifies the sex of the individual, together with an affidavit from the health care facility, health care professional, or laboratory testing facility that conducted the test or analyzed the test results, attesting to the test results and the accuracy of the test results; or
  - c. The sex of the individual was changed with anatomically correct genitalia for the identified sex as certified by a medical provider.
3. As used in this chapter, "sex" means the biological state of being male or female, based on an individual's nonambiguous sex organs, chromosomes, or endogenous hormone profiles at birth.

Approved May 8, 2023

Filed May 9, 2023

## CHAPTER 233

### SENATE BILL NO. 2379

(Senators Weston, Cleary, Lee)  
(Representatives M. Ruby, Weisz)

AN ACT to amend and reenact section 23-02.1-01 and subsection 1 of section 23-02.1-27 of the North Dakota Century Code, relating to homeless youth access to birth records; and to declare an emergency.

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

<sup>143</sup> **SECTION 1. AMENDMENT.** Section 23-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **23-02.1-01. Definitions.**

As used in this chapter:

1. "Authorized representative" means a person that has the legal authority to act on behalf of the person named on a record, including a personal representative or guardian.
2. "Certified" means a copy of the original record on file with the department of health and human services which is signed and sealed by the state registrar or deputy state registrar.
3. "Dead body" means a lifeless human body or parts of such body or bones thereof from the state of which it may reasonably be concluded that death recently occurred.
4. "Electronic birth registration system" means the electronic birth registration system maintained by the department of health and human services.
5. "Electronic death registration system" means the electronic death registration system maintained by the department of health and human services.
6. "Facts of death" means the demographic and personal information pertaining to an individual's death.
7. "Fetal death" or "birth resulting in stillbirth" means death occurring before the complete expulsion or extraction from its mother of a product of human conception. The death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

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<sup>143</sup> Section 23-02.1-01 was also amended by section 1 of House Bill No. 1139, chapter 234, section 26 of House Bill No. 1165, chapter 229, and section 5 of House Bill No. 1474, chapter 66.

8. "Filing" means the presentation of a record, report, or other information provided for in this chapter of a birth, death, fetal death, adoption, marriage, divorce, or other event as specified by the state health officer for registration by the state registrar.
9. "Final disposition" means the entombment, burial, interment, cremation, whole-body donation to a school of medicine, removal from the state, or other disposition of a dead body or fetus.
10. "Health statistics" means data derived from records of birth, death, fetal death, marriage, divorce, or other records relating to the health of the populace or the state of the environment.
11. "Homeless youth" means an individual under sixteen years of age living in one of the situations described in 42 U.S.C. 11434(a)(2) and who is not in the care and physical custody of a parent or legal guardian.
12. "Homeless youth agency" means an agency assisting a homeless youth in obtaining the homeless youth's birth record.
13. "Institution" means any establishment, public or private, which provides inpatient medical, surgical, or diagnostic care or treatment, or nursing, custodial, or domiciliary care to two or more individuals unrelated by blood, or to which individuals are committed by law.
- 42-14. "Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.
- 43-15. "Medical certification" means the medical information pertaining to an individual's death, including the cause and manner of death.
- 44-16. "Miscarriage of birth" means the expulsion of a fetus from the womb, spontaneously or as a result of an accident, before twenty weeks gestation.
- 45-17. "Personal or real property interests" means ownership or other legal rights or duties concerning personal or real property.
- 46-18. "Physician" means an individual authorized or licensed to practice medicine or osteopathy under chapter 43-17.
- 47-19. "Registration" means the acceptance by the state registrar and incorporation into official records, reports, or other records provided for in this chapter, of birth, death, fetal death, marriage, divorce, or other records as may be determined by the state health officer.
- 48-20. "Relative" means an individual's current or surviving spouse, a parent or legal guardian, a child, a grandparent, or a grandchild. The state registrar may require proof of the relationship.

~~19-21.~~ "Subregistrar" means a funeral practitioner or other suitable individual from a licensed funeral home who is appointed by the state registrar for the purpose of issuing final disposition-transit permits.

~~20-22.~~ "System of health statistics tabulation and analysis" includes the tabulation, analysis, and presentation or publication of statistical data derived from health statistics.

~~21-23.~~ "System of vital records registration" includes the registration, collection, preservation, amendment, and certification of birth, death, fetal death, marriage, divorce, or other records as may be determined necessary by the state health officer or the state health officer's designee.

<sup>144</sup> **SECTION 2. AMENDMENT.** Subsection 1 of section 23-02.1-27 of the North Dakota Century Code is amended and reenacted as follows:

1. A certified copy of a birth record may be issued to the individual named on the record if that individual is at least sixteen years old, to a parent named on the record, to an authorized representative, to a homeless youth agency, or by the order of a court of competent jurisdiction. If the individual named on a birth record is deceased, a certified copy of that record also may ~~also~~ be issued to a relative. If the date of birth on any birth record is more than one hundred and twenty-five years old, that record is an open record and a certified copy may be issued to anyone, except that adoption records remain confidential.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 12, 2023

Filed April 13, 2023

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<sup>144</sup> Section 23-02.1-27 was also amended by section 1 of House Bill No. 1326, chapter 235, and section 1 of House Bill No. 1481, chapter 236.

## CHAPTER 234

### HOUSE BILL NO. 1139

(Representatives Satrom, S. Olson, Schauer, Strinden)  
(Senators Clemens, Conley, Rust)

AN ACT to amend and reenact sections 23-02.1-01, 23-02.1-13, and 23-02.1-15 of the North Dakota Century Code, relating to required elements of birth records.

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

<sup>145</sup> **SECTION 1. AMENDMENT.** Section 23-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **23-02.1-01. Definitions.**

As used in this chapter:

1. "Authorized representative" means a person that has the legal authority to act on behalf of the person named on a record, including a personal representative or guardian.
2. "Birth record" means a record reporting a live birth.
3. "Certified" means a copy of the original record on file with the department of health and human services which is signed and sealed by the state registrar or deputy state registrar.
- ~~3-4.~~ "Dead body" means a lifeless human body or parts of such body or bones thereof from the state of which it may reasonably be concluded that death recently occurred.
- ~~4-5.~~ "Electronic birth registration system" means the electronic birth registration system maintained by the department of health and human services.
- ~~5-6.~~ "Electronic death registration system" means the electronic death registration system maintained by the department of health and human services.
- ~~6-7.~~ "Facts of death" means the demographic and personal information pertaining to an individual's death.
- ~~7-8.~~ "Fetal death" or "birth resulting in stillbirth" means death occurring before the complete expulsion or extraction from its mother of a product of human conception. The death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

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<sup>145</sup> Section 23-02.1-01 was also amended by section 26 of House Bill No. 1165, chapter 229, section 5 of House Bill No. 1474, chapter 66, and section 1 of Senate Bill No. 2379, chapter 233.

- 8-9. "Filing" means the presentation of a record, report, or other information provided for in this chapter of a birth, death, fetal death, adoption, marriage, divorce, or other event as specified by the state health officer for registration by the state registrar.
- 9-10. "Final disposition" means the entombment, burial, interment, cremation, whole-body donation to a school of medicine, removal from the state, or other disposition of a dead body or fetus.
- 40-11. "Health statistics" means data derived from records of birth, death, fetal death, marriage, divorce, or other records relating to the health of the populace or the state of the environment.
- 44-12. "Institution" means any establishment, public or private, which provides inpatient medical, surgical, or diagnostic care or treatment, or nursing, custodial, or domiciliary care to two or more individuals unrelated by blood, or to which individuals are committed by law.
- 42-13. "Live birth" means the complete expulsion or extraction from its mother of a product of human conception, ~~irrespective~~regardless of the duration of pregnancy, which after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.
- 43-14. "Medical certification" means the medical information pertaining to an individual's death, including the cause and manner of death.
- 44-15. "Miscarriage of birth" means the expulsion of a fetus from the womb, spontaneously or as a result of an accident, before twenty weeks gestation.
- 45-16. "Personal or real property interests" means ownership or other legal rights or duties concerning personal or real property.
- 46-17. "Physician" means an individual authorized or licensed to practice medicine or osteopathy under chapter 43-17.
- 47-18. "Registration" means the acceptance by the state registrar and incorporation into official records, reports, or other records provided for in this chapter, of birth, death, fetal death, marriage, divorce, or other records as may be determined by the state health officer.
- 48-19. "Relative" means an individual's current or surviving spouse, a parent or legal guardian, a child, a grandparent, or a grandchild. The state registrar may require proof of the relationship.
- 49-20. "Sex" means the biological state of being female or male, based on the individual's nonambiguous sex organs, chromosomes, and endogenous hormone profiles at birth.
21. "Subregistrar" means a funeral practitioner or other suitable individual from a licensed funeral home who is appointed by the state registrar for the purpose of issuing final disposition-transit permits.

- 20-22. "System of health statistics tabulation and analysis" includes the tabulation, analysis, and presentation or publication of statistical data derived from health statistics.
- 24-23. "System of vital records registration" includes the registration, collection, preservation, amendment, and certification of birth, death, fetal death, marriage, divorce, or other records as may be determined necessary by the state health officer or the state health officer's designee.

**SECTION 2. AMENDMENT.** Section 23-02.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-13. Birth registration.**

1. A birth record for each live birth that occurs in this state must be filed with the state registrar.
2. ~~When~~If a birth occurs in an institution, the person in charge of the institution or a designated representative ~~must~~shall use the department of health and human services' electronic birth registration system to report the birth, including all personal and medical facts, to the state registrar within five days after the birth.
3. ~~When~~If a birth occurs outside an institution, the required forms prescribed by the department of health and human services must be prepared and filed with the state registrar, within thirty days of the birth by one of the following in the indicated order of priority:
  - a. The physician in attendance at or immediately after the birth, or in the absence of such an individual;
  - b. Any other individual in attendance at or immediately after the birth, or in the absence of such an individual; or
  - c. The father, the mother, or in the absence of the father and the inability of the mother, the individual in charge of the premises where the birth occurred.
4. If a man and the mother are or have been married or have attempted to marry each other in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the child is born during the marriage or attempted marriage, or within three hundred days after the termination of cohabitation or after the marriage or attempted marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court, the name of the man must be entered on the birth record as the father of the child unless the presumption of paternity has been rebutted by a court decree.
5. If the child is not born during the marriage of the mother, or within three hundred days after a marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court, the name of the father may not be entered on the birth record unless:
  - a. After the child's birth, the father and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in

apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

- (1) He has acknowledged his paternity of the child in writing filed with the state registrar; or
  - (2) He is obligated to support the child under a written voluntary promise or by court order;
- b. After the child's birth, the child's natural mother and the father voluntarily acknowledge the child's paternity on a form prescribed by the department of health and human services, signed by the child's natural mother and biological father, and filed with the state registrar; or
  - c. A court or other entity of competent jurisdiction has adjudicated paternity.
6. If, in accordance with subsections 4 and 5, the name of the father of the child is not entered on the birth record, the child's surname must be shown on the birth record as the current legal surname of the mother at the time of birth unless an affidavit or an acknowledgment of paternity signed by both parents is filed with the department of health and human services.
  7. A birth record must include the designation of the sex of the child which must be either male or female. An entry of "not yet determined" may not be entered unless the sex cannot be determined based on the child's nonambiguous sex organs, chromosomes, and endogenous hormone profiles at birth.

**SECTION 3. AMENDMENT.** Section 23-02.1-15 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-15. Delayed registration of birth.**

1. ~~When~~If the birth of an individual born in this state has not been registered, a birth record may be filed in accordance with the regulations of the department of health and human services. ~~Such~~The birth record must be registered subject to such evidentiary requirements as the department of health and human services shall prescribe to substantiate the alleged facts of birth.
2. ~~Records of~~A birth record registered one year or more after the date of occurrence must be marked "delayed" and show on the face of the birth record the date of delayed registration.
3. A summary statement of the evidence submitted in support of the delayed registration must be endorsed on the birth record.
4. a. ~~When~~If an applicant does not submit the minimum documentation required in the regulations for delayed registration or when the state registrar finds reason to question the validity or adequacy of the birth record or documentary evidence, the state registrar may not register the delayed birth record and shall advise the applicant of the reasons for this action. ~~In the event that~~If the deficiencies are not corrected, the state registrar shall advise the applicant of the right of appeal to a court of competent jurisdiction for a judicial determination of the birth facts.

- b. The department of health and human services ~~may~~ by regulation may provide for the dismissal of an application that is more than one year old and is not being actively pursued.
5. A report of live birth may not be registered for a deceased individual one year or more after that individual's date of birth.

Approved April 7, 2023

Filed April 10, 2023

## CHAPTER 235

### HOUSE BILL NO. 1326

(Representatives Cory, Pyle)  
(Senators Hogue, Kreun)

AN ACT to amend and reenact subsection 2 of section 23-02.1-27 of the North Dakota Century Code, relating to access to death records.

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

<sup>146</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 23-02.1-27 of the North Dakota Century Code is amended and reenacted as follows:

2. A certified copy of a complete death record may be issued to a relative, an authorized representative, the child fatality review board, a licensed physician, or a genetic sibling for the purposes of researching family medical history, a funeral director reporting the facts of death, the commissioner of veterans' affairs for a death record of an individual designated as having served in the United States armed forces, or a person with personal or real property interests that depend upon information contained in the complete death record or by the order of a court of competent jurisdiction and may include the cause of death and the social security number. A certified copy of the facts of death record that includes the facts of death and the social security number may be issued to any person that may obtain a certified copy of a complete death record or to any licensed attorney who requires the copy for a bona fide legal determination. A certified copy of an informational death record may be issued to the general public, but the copy may not contain the cause of death or the social security number.

Approved March 23, 2023

Filed March 23, 2023

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<sup>146</sup> Section 23-02.1-27 was also amended by section 1 of House Bill No. 1481, chapter 236, and section 2 of Senate Bill No. 2379, chapter 233.

## CHAPTER 236

### HOUSE BILL NO. 1481

(Representative Dobervich)

AN ACT to create and enact a new subsection to section 44-04-18.7 of the North Dakota Century Code, relating to exempt records of coroners and medical examiners; and to amend and reenact subsection 2 of section 23-02.1-27 and subdivision a of subsection 2 of section 44-04-18.18 of the North Dakota Century Code, relating to access to death records and training of coroner and medical personnel.

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

**147 SECTION 1. AMENDMENT.** Subsection 2 of section 23-02.1-27 of the North Dakota Century Code is amended and reenacted as follows:

2. A certified copy of a complete death record may be issued to a relative, an authorized representative, the child fatality review board, a licensed physician, or a genetic sibling for the purposes of researching family medical history; a funeral director, coroner, medical examiner, or state forensic examiner reporting the facts of death; ~~or~~; a person with personal or real property interests that depend upon information contained in the complete death record; or by the order of a court of competent jurisdiction, and may include the cause of death and the social security number. A certified copy of the facts of death record that includes the facts of death and the social security number may be issued to any person that may obtain a certified copy of a complete death record or to any licensed attorney who requires the copy for a bona fide legal determination. A certified copy of an informational death record may be issued to the general public, but the copy may not contain the cause of death or the social security number.

**148 SECTION 2.** A new subsection to section 44-04-18.7 of the North Dakota Century Code is created and enacted as follows:

An image taken by a coroner, a medical examiner, or coroner or medical examiner personnel, using a digital camera or similar device is an exempt record.

**SECTION 3. AMENDMENT.** Subdivision a of subsection 2 of section 44-04-18.18 of the North Dakota Century Code is amended and reenacted as follows:

- a. After redacting all information identifying the decedent, including name, address, and social security number, and anonymizing facial recognition, a medical examiner, coroner, or physician may use an autopsy photograph, image, or recording for:

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<sup>147</sup> Section 23-02.1-27 was also amended by section 1 of House Bill No. 1326, chapter 235, and section 2 of Senate Bill No. 2379, chapter 233.

<sup>148</sup> Section 44-04-18.7 was also amended by section 2 of Senate Bill No. 2232, chapter 394, and section 1 of House Bill No. 1262, chapter 397.

- (1) Medical or scientific teaching or training purposes;
- (2) Teaching or training of law enforcement personnel;
- (3) Teaching or training of attorneys or others with a bona fide professional need to use or understand forensic science;
- (4) Conferring with medical or scientific experts; or
- (5) Publication in a scientific or medical journal or textbook; or
- (6) Teaching or training of coroner personnel or other licensed or certified medical professionals.

Approved March 23, 2023

Filed March 23, 2023

## CHAPTER 237

### SENATE BILL NO. 2139

(Senators Rummel, Cleary)  
(Representatives Lefor, Steiner)

AN ACT to amend and reenact sections 11-19.1-15 and 23-06-03 of the North Dakota Century Code, relating to final disposition of individuals who are indigent.

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

**SECTION 1. 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 in which a death is discovered shall take charge of the case and ensure that relatives or friends of the deceased individual, if known, are notified as soon as possible, giving details of the death and disposition of the deceased 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 final disposition of the body, the remaining personal effects of the deceased must be turned over to law enforcement for appropriate disposition.
2. The remains must be:
  - a. Disposed of in accordance with section 23-06-14; or
  - b. Otherwise disposed of in accordance with the laws governing ~~the burial~~final disposition of residents within the state who are indigent ~~persons within this state.~~

<sup>149</sup> **SECTION 2. AMENDMENT.** Section 23-06-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **23-06-03. Duty of final disposition - Indigent ~~burial~~Final disposition of individuals who are indigent - Decedent's instructions.**

1. The duty of final disposition of the body of a deceased individual devolves upon the following individual in the order of priority:
  - a. Any legally competent adult given the duty of final disposition by the deceased individual in a statement conforming with section 23-06-31, except the legally competent adult specified in the statement conforming with section 23-06-31 may decline the duty of final disposition unless the

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<sup>149</sup> Section 23-06-03 was also amended by section 1 of House Bill No. 1363, chapter 238.

- individual would otherwise have the duty of final disposition under this section;
- b. The surviving spouse if the deceased was married;
  - c. If the deceased was not married but left kindred, upon the majority of the adult children of the decedent; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by the child who represents to be the sole surviving child or the children who represent to constitute a majority of the surviving children;
  - d. The surviving parent or parents of the decedent, each having equal authority;
  - e. The adult sibling or the majority of the adult siblings of the decedent; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by the sibling who represents to be the sole surviving sibling or the siblings who represent to constitute a majority of the surviving siblings;
  - f. The adult grandchild or the majority of the adult grandchildren of the decedent; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by a grandchild who represents to be the only grandchild reasonably available to control final disposition of the decedent's remains or the grandchildren who represent to constitute a majority of grandchildren reasonably available to control final disposition of the decedent's remains;
  - g. The grandparent or the grandparents of the decedent, each having equal authority;
  - h. The adult nieces and nephews of the decedent or a majority of the adult nieces and nephews; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by a niece or nephew, who represents to be the only niece or nephew reasonably available to control final disposition of the decedent's remains or the nieces and nephews who represent to constitute a majority of the nieces and nephews reasonably available to control final disposition of the decedent's remains;
  - i. An individual who was acting as the guardian of the decedent with authority to make health care decisions for the decedent at the time of death;
  - j. An adult who exhibited special care and concern for the decedent;
  - k. An individual respectively in the next degree of kinship in the order named by law to inherit the estate of the decedent; or
  - l. The appropriate public or court authority, as required by law. For purposes of this subdivision, the appropriate public or court authority includes the human service zone of the county in which the death occurred if the individual dies without apparent financial means to provide for final disposition or the district court in the county in which the death occurred. If

the duty of final disposition devolves to this level, the appropriate public or court authority may direct final disposition to a mortician or funeral director after the coroner notifies the appropriate public or court authority in writing that no individuals identified in subdivisions a through k have accepted the duty of final disposition. A person identified under this subdivision who exercises the duty of final disposition of the body of a deceased individual is immune from civil liability for any act or omission arising out of the duty of final disposition.

2. If there is only one individual in a degree of relationship to the decedent described in subsection 1, and a district court determines the person and the decedent were estranged at the time of death, the right to control and the duty of disposition devolves to the next degree of relationship under subsection 1. For purposes of this subsection, "estranged" means having a relationship characterized by mutual enmity, hostility, or indifference.
3. If an individual to whom the right to control and duty of disposition devolves under subsection 1, refuses to accept or declines to act upon the right or duty, that right and duty passes as follows:
  - a. To another individual with the same degree of relationship to the decedent as the individual refusing to accept or declining to act; or
  - b. To the individual in the next degree of relationship to the decedent under subsection 1.
4. If a dispute exists regarding the right to control or duty of final disposition, the parties in dispute or the mortician or funeral director may file a petition in the district court in the county of residence of the decedent requesting the court make a determination in the matter. If the right to control and duty of final disposition devolves to more than one individual with the same degree of relationship to the decedent and those individuals do not, by majority vote, make a decision regarding arrangements and final disposition and a district court has been petitioned to make a determination, the court shall consider the following factors in making a determination:
  - a. The reasonableness, practicality, and resources available for payment of the proposed arrangements and final disposition;
  - b. The degree of the personal relationship between the decedent and each of the individuals in the same degree of relationship to the decedent;
  - c. The expressed wishes and directions of the decedent and the extent to which the decedent provided resources for the purpose of carrying out the wishes or directions; and
  - d. The degree to which the arrangements and final disposition will allow for participation by all who wish to pay respect to the decedent.
5. If the individual who has the duty of final disposition does not arrange for final disposition of the body within the time required by this chapter, the individual next specified shall ~~bury or otherwise dispose~~arrange for final disposition of the body within the requirements of this chapter.

6. a. If the deceased did not leave sufficient means to pay for expenses of final disposition, ~~including the cost of a casket~~, and is not survived by an individual described by subsection 1 and identified for financial responsibility within the human service zone's general assistance policy, within ~~fifteen~~seven days of application for services the human service zone of the county in which the deceased had residence for general assistance purposes or, if residence cannot be established, within ~~fifteen~~seven days of application for assistance the human service zone of the county in which the death occurs shall employ a person to arrange for and supervise the final disposition. If the deceased was a resident or inmate of a public institution, within ~~fifteen~~seven days of application for assistance the human service zone in which the deceased was a resident for general assistance purposes immediately before entering the institution shall employ a person to arrange for and supervise the final disposition.
  - b. ~~The department of health and human services may negotiate with the interested funeral directors or funeral homes regarding cremation reimbursement for 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 of final disposition under this subsection is three thousand five hundred dollars.~~
  - c. The department of health and human services may provide for the use of a military casket or urn, if the deceased was a veteran as defined in section 37-01-40, unless the additional cost exceeds the ~~negotiated expenses of reimbursement rate under this section~~subsection or a surviving spouse or the nearest of kin of the deceased elects a nonmilitary ~~casket~~urn.
  - d. ~~The human service zone shall pay the charge for funeral expenses as negotiated by the department of health and human services final disposition of an individual who is indigent as provided under this section. The human service zone shall create a process to review and accommodate a request for burial due to religious beliefs. The deceased is eligible for indigent final disposition, the human service zone may not decrease the human service zone payment due to a nominal amount left by the deceased or contributed by ~~kin~~ spouse, parent, adult children, or any other party to defray the expenses of ~~burial or cremation~~final disposition. Funds adequate to allow for burial instead of cremation are considered nominal under this section.~~
  - e. Except for burial conducted under subdivision d, final disposition must be conducted by cremation.
  - f. The department of health and human services and human service zones shall maintain a standardized eligibility policy and application form to be used for the purposes of indigent final disposition application.
7. If the individual with the duty of final disposition 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, 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 23-06-31, or a document of gift for an anatomical gift.

8. If the decedent died while serving in any branch of the United States armed forces, the United States reserve forces, or the national guard, as provided by 10 U.S.C. 1481 section (a)(1) through (8) as effective through December 2001, and completed a United States department of defense record of emergency data, DD form 93, or its successor form or its equivalent branch's form, the duty to bury or cremate the decedent or to provide other funeral and disposition arrangements for the decedent devolves on the person authorized by the decedent pursuant to that form.
9. A funeral director or mortician has complete authority to control the final disposition and to proceed under this chapter to recover reasonable charges for the final disposition if:
  - a. The funeral director or mortician has actual knowledge none of the individuals described in subsection 1 exist, can be found after reasonable inquiry, or can be contacted by reasonable means; and
  - b. Within thirty-six hours after having been given written notice of the facts, the appropriate court or public authority fails to assume responsibility for disposition of the remains. Written notice may be delivered by hand, United States mail, or facsimile transmission.

Approved April 26, 2023

Filed April 26, 2023

## CHAPTER 238

### HOUSE BILL NO. 1363

(Representatives Rios, Conmy, Dakane, Dyk, Roers Jones, Swiontek)  
(Senators Beard, Bekkedahl)

AN ACT to amend and reenact section 23-06-03 of the North Dakota Century Code, relating to the duty of final disposition.

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

<sup>150</sup> **SECTION 1. AMENDMENT.** Section 23-06-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **23-06-03. Duty of final disposition - Indigent burial - Decedent's instructions.**

1. The duty of disposition of the body of a deceased individual devolves upon the following individual in the order of priority:
  - a. Any legally competent adult given the duty of final disposition by the deceased individual in a statement conforming with section 23-06-31, except the legally competent adult specified in the statement conforming with section 23-06-31 may decline the duty of final disposition unless the individual would otherwise have the duty of final disposition under this section;
  - b. The surviving spouse if ~~the~~:
    - (1) The deceased was married;
    - (2) The surviving spouse has not been arrested for, or pled guilty or nolo contendere to, or has been found guilty of intentionally and feloniously killing the deceased; and
    - (3) The surviving spouse has not admitted to or been charged with intentionally and feloniously killing the deceased.
  - c. If the deceased was not married ~~but~~ was intentionally and feloniously killed by the surviving spouse, or the surviving spouse was arrested for, admitted to, or was charged with intentionally and feloniously killing the deceased, and left kindred, upon the majority of the adult children of the decedent; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by the child who represents to be the sole surviving child or the children who represent to constitute a majority of the surviving children;
  - d. The surviving parent or parents of the decedent, each having equal authority;

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<sup>150</sup> Section 23-06-03 was also amended by section 2 of Senate Bill No. 2139, chapter 237.

- e. The adult sibling or the majority of the adult siblings of the decedent; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by the sibling who represents to be the sole surviving sibling or the siblings who represent to constitute a majority of the surviving siblings;
  - f. The adult grandchild or the majority of the adult grandchildren of the decedent; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by a grandchild who represents to be the only grandchild reasonably available to control final disposition of the decedent's remains or the grandchildren who represent to constitute a majority of grandchildren reasonably available to control final disposition of the decedent's remains;
  - g. The grandparent or the grandparents of the decedent, each having equal authority;
  - h. The adult nieces and nephews of the decedent or a majority of the adult nieces and nephews; however, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by a niece or nephew, who represents to be the only niece or nephew reasonably available to control final disposition of the decedent's remains or the nieces and nephews who represent to constitute a majority of the nieces and nephews reasonably available to control final disposition of the decedent's remains;
  - i. An individual who was acting as the guardian of the decedent with authority to make health care decisions for the decedent at the time of death;
  - j. An adult who exhibited special care and concern for the decedent;
  - k. An individual respectively in the next degree of kinship in the order named by law to inherit the estate of the decedent; or
  - l. The appropriate public or court authority, as required by law. For purposes of this subdivision, the appropriate public or court authority includes the human service zone of the county in which the death occurred if the individual dies without apparent financial means to provide for final disposition or the district court in the county in which the death occurred.
2. If there is only one individual in a degree of relationship to the decedent described in subsection 1, and a district court determines the person and the decedent were estranged at the time of death, the right to control and the duty of disposition devolves to the next degree of relationship under subsection 1. For purposes of this subsection, "estranged" means having a relationship characterized by mutual enmity, hostility, or indifference.
  3. If an individual to whom the right to control and duty of disposition devolves under subsection 1, refuses to accept or declines to act upon the right or duty, that right and duty passes as follows:
    - a. To another individual with the same degree of relationship to the decedent as the individual refusing to accept or declining to act; or

- b. To the individual in the next degree of relationship to the decedent under subsection 1.
4. If a dispute exists regarding the right to control or duty of disposition, the parties in dispute or the mortician or funeral director may file a petition in the district court in the county of residence of the decedent requesting the court make a determination in the matter. If the right to control and duty of disposition devolves to more than one individual with the same degree of relationship to the decedent and those individuals do not, by majority vote, make a decision regarding arrangements and final disposition and a district court has been petitioned to make a determination, the court shall consider the following factors in making a determination:
    - a. The reasonableness, practicality, and resources available for payment of the proposed arrangements and final disposition;
    - b. The degree of the personal relationship between the decedent and each of the individuals in the same degree of relationship to the decedent;
    - c. The expressed wishes and directions of the decedent and the extent to which the decedent provided resources for the purpose of carrying out the wishes or directions; and
    - d. The degree to which the arrangements and final disposition will allow for participation by all who wish to pay respect to the decedent.
  5. If the individual who has the duty of final disposition does not arrange for final disposition of the body within the time required by this chapter, the individual next specified shall bury or otherwise dispose of the body within the requirements of this chapter.
  6.
    - a. If the deceased did not leave sufficient means to pay for expenses of final disposition, including the cost of a casket, and is not survived by an individual described by subsection 1 and identified for financial responsibility within the human service zone's general assistance policy, within fifteen days of application for services the human service zone of the county in which the deceased had residence for general assistance purposes or, if residence cannot be established, within fifteen days of application for assistance the human service zone of the county in which the death occurs shall employ a person to arrange for and supervise the final disposition. If the deceased was a resident or inmate of a public institution, within fifteen days of application for assistance the human service zone in which the deceased was a resident for general assistance purposes immediately before entering the institution shall employ a person to arrange for and supervise the final disposition.
    - b. The department of health and human services 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.
    - c. The department of health and human services may provide for the use of a military casket or urn, if the deceased was a veteran as defined in section

- 37-01-40, unless the additional cost exceeds the negotiated expenses of this section or a surviving spouse or the nearest of kin of the deceased elects a nonmilitary casket.
- d. The human service zone shall pay the charge for funeral expenses as negotiated by the department of health and human services. The human service zone may not decrease the human service zone payment due to a nominal amount left by the deceased or contributed by kin or any other party to defray the expenses of burial or cremation. Funds adequate to allow for burial instead of cremation are considered nominal under this section.
7. If the individual with the duty of final disposition 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, 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 23-06-31, or a document of gift for an anatomical gift.
  8. If the decedent died while serving in any branch of the United States armed forces, the United States reserve forces, or the national guard, as provided by 10 U.S.C. 1481 section (a)(1) through (8) as effective through December 2001, and completed a United States department of defense record of emergency data, DD form 93, or its successor form or its equivalent branch's form, the duty to bury or cremate the decedent or to provide other funeral and disposition arrangements for the decedent devolves on the person authorized by the decedent pursuant to that form.
  9. A funeral director or mortician has complete authority to control the final disposition and to proceed under this chapter to recover reasonable charges for the final disposition if:
    - a. The funeral director or mortician has actual knowledge none of the individuals described in subsection 1 exist, can be found after reasonable inquiry, or can be contacted by reasonable means; and
    - b. Within thirty-six hours after having been given written notice of the facts, the appropriate court or public authority fails to assume responsibility for disposition of the remains. Written notice may be delivered by hand, United States mail, or facsimile transmission.

Approved April 4, 2023

Filed April 5, 2023

## CHAPTER 239

### SENATE BILL NO. 2302

(Senators Wanzek, Dever, Lee, K. Roers)  
(Representatives Steiner, Weisz)

AN ACT to create and enact a new section to chapter 23-06.6 of the North Dakota Century Code, relating to prohibiting discrimination in the organ transplant process.

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

**SECTION 1.** A new section to chapter 23-06.6 of the North Dakota Century Code is created and enacted as follows:

#### **Discrimination prohibited.**

A person may not discriminate against a recipient at any point in the organ transplant process, solely on the basis of the recipient's mental or physical disability, unless the disability has been adequately determined to be medically significant to the provision of an anatomical gift.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 240

### SENATE BILL NO. 2125

(Senators Mathern, Erbele, Hogan)  
(Representatives Dobervich, Kasper, Swiontek)

AN ACT to amend and reenact sections 23-06.5-06 and 23-06.5-17 of the North Dakota Century Code, relating to health care directive acceptance of appointment as agent.

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

**SECTION 1. AMENDMENT.** Section 23-06.5-06 of the North Dakota Century Code is amended and reenacted as follows:

##### **23-06.5-06. Acceptance of appointment - Withdrawal as agent.**

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

**SECTION 2. AMENDMENT.** Section 23-06.5-17 of the North Dakota Century Code is amended and reenacted as follows:

##### **23-06.5-17. Optional health care directive form.**

The following is an optional form of a health care directive and is not a required form:

#### HEALTH CARE DIRECTIVE

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

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

AND/OR

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

AND/OR

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

PART I: APPOINTMENT OF HEALTH CARE AGENT

THIS IS WHO I WANT TO MAKE HEALTH CARE DECISIONS FOR ME IF I AM UNABLE TO MAKE AND COMMUNICATE HEALTH CARE DECISIONS FOR MYSELF

(I know I can change my agent or alternate agent at any time

and I know I do not have to appoint an agent or an alternate agent)

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

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

Relationship of my health care agent to me: \_\_\_\_\_

Telephone number of my health care agent: \_\_\_\_\_

Address of my health care agent: \_\_\_\_\_

(OPTIONAL) APPOINTMENT OF ALTERNATE HEALTH CARE AGENT: If my health care agent is not reasonably available, I trust and appoint \_\_\_\_\_ to be my health care agent instead.

Relationship of my alternate health care agent to me: \_\_\_\_\_

Telephone number of my alternate health care agent: \_\_\_\_\_

Address of my alternate health care agent: \_\_\_\_\_

THIS IS WHAT I WANT MY HEALTH CARE AGENT TO BE ABLE TO DO IF I AM UNABLE TO MAKE AND COMMUNICATE HEALTH CARE DECISIONS FOR MYSELF

(I know I can change these choices)

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

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

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

(B) Choose my health care providers.

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

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

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

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

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

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

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

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**PART II: HEALTH CARE INSTRUCTIONS**

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

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

**(A) THESE ARE MY BELIEFS AND VALUES ABOUT MY HEALTH CARE**

(I know I can change these choices or leave any of them blank)

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

My goals for my health care:

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My fears about my health care:

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My spiritual or religious beliefs and traditions:

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

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

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(B) THIS IS WHAT I WANT AND DO NOT WANT FOR MY HEALTH CARE

(I know I can change these choices or leave any of them blank)

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

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

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

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

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

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

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

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

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

Who I would like to be my health care provider:

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Where I would like to live to receive health care:

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

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

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Any other things:

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PART III: MAKING AN ANATOMICAL GIFT

(A) I WANT TO BE AN ORGAN DONOR

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

Any needed organs and tissue.

Only the following organs and tissue: \_\_\_\_\_

(B) I DO NOT WANT TO BE AN ORGAN DONOR

I do not want to be an organ donor at the time of my death. I have told my family my decision and ask my family to honor my wishes.

PART IV: MAKING THE DOCUMENT LEGAL

~~PRIOR~~EARLIER DESIGNATIONS REVOKED. I revoke any ~~prior~~earlier health care directive.

DATE AND SIGNATURE OF PRINCIPAL

(YOU MUST DATE AND SIGN THIS HEALTH CARE DIRECTIVE)

I sign my name to this Health Care Directive Form on \_\_\_\_\_  
at \_\_\_\_\_

(date)

\_\_\_\_\_  
(city)

\_\_\_\_\_  
(state)

\_\_\_\_\_  
(you sign here)

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

NOTARY PUBLIC OR STATEMENT OF WITNESSES

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

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

Option 1: Notary Public

State of \_\_\_\_\_

County of \_\_\_\_\_

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

\_\_\_\_\_  
(Signature of Notary Public)

My commission expires \_\_\_\_\_, 20\_\_.

Option 2: Two Witnesses

Witness One:

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

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

\_\_\_\_\_  
(Signature of Witness One)

\_\_\_\_\_  
(Address)

Witness Two:

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

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

\_\_\_\_\_  
(Signature of Witness Two)

\_\_\_\_\_  
(Address)

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

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

\_\_\_\_\_

(Signature of agent/date)

\_\_\_\_\_

(Signature of alternate agent/date)

PRINCIPAL'S STATEMENT

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

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

(Signature of Principal)

Approved March 20, 2023

Filed March 21, 2023

## CHAPTER 241

### HOUSE BILL NO. 1390

(Representatives Hanson, Beltz, Nelson, Weisz)  
(Senators Cleary, Hogan, Lee)

AN ACT to create and enact a new section to chapter 23-07 of the North Dakota Century Code, relating to the creation of a suicide fatality review commission; and to provide an appropriation.

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

**SECTION 1.** A new section to chapter 23-07 of the North Dakota Century Code is created and enacted as follows:

#### **Suicide fatality review commission.**

1. The commissioner of the department of health and human services shall appoint the members of the suicide fatality review commission and select the presiding officer from the membership. Members serve at the pleasure of the commissioner. The commissioner may invite a temporary member based on the member's relevant expertise for a particular case. Commission membership may include representatives of the following:
  - a. A mental health practitioner from the public sector;
  - b. A mental health practitioner from the private sector;
  - c. A county coroner;
  - d. A public health epidemiologist;
  - e. The state forensic examiner;
  - f. The forensic pathology department at the university of North Dakota school of medicine and health sciences;
  - g. An emergency medical services provider;
  - h. A crisis line;
  - i. A public elementary or secondary school;
  - j. A veterans organization;
  - k. A national suicide prevention organization;
  - l. The faith community;
  - m. Law enforcement; and
  - n. One or more tribal nations in the state.

2. The commission shall review suicide deaths that have occurred in the state with the goal of:
  - a. Identifying the risk factors, protective factors, systems, and services involved in each case;
  - b. Recommending policies, protocols, and other actions to improve community, service, and system responses to individuals at risk of suicide; and
  - c. Providing consultation and coordination for agencies involved in the prevention and investigation of suicide.
3. In conducting the duties of the commission, the commission may investigate and review the facts and circumstances of all deaths that occur in the state as a result of suicide, focusing on system and process issues not the performance of individuals. All deaths by suicide may be reviewed; however, all deaths may not be reviewed with the same level of intensity.
  - a. The review may include necessary and appropriate information the commission determines to be relevant to the review, including laws and policies, actions taken by persons related to or involved with the incident, and confidential and other appropriate records of an organization related to the suicide.
  - b. Upon the written request of the presiding officer of the commission, a health care facility and health care provider shall disclose all patient records of the facility or provider which are requested by the commission and pertain to an identified suicide fatality, as permitted under federal law. The presiding officer may request records from the most recent thirty-six month period. The commission may access relevant autopsy records, police records, school records, child protective services records, and adult protective services records as needed for a case review.
  - c. The determinations, conclusions, and recommendations of the commission are not admissible in a civil or criminal proceeding.
4. The department of health and human services shall notify the commission of suicide deaths for which the investigation of a county coroner or law enforcement has been completed. Notwithstanding confidentiality provisions of chapter 23-07, the department of health and human services shall disclose to the commission records regarding suicide fatalities in the state.
5. Notwithstanding section 50-25.1-04.5, the commission may coordinate with the child fatality review panel in conducting the duties of the commission.
6. The commission shall meet at least two times per year. Notwithstanding section 44-04-19, all meetings of the commission are closed to the public. Notwithstanding section 44-04-18, all records of the commission are confidential, except for annual reports. The commission and each member of the commission shall preserve the confidentiality of each record examined.
7. Before January thirty-first of each year, the commission shall provide the commissioner of the department of health and human services with an annual report from the previous calendar year of the commission's findings and

recommendations. The report may not disclose personally identifiable information regarding suicide fatalities. The department shall post the report on the department's website.

8. The department of health and human services shall provide or arrange for administrative services to assist the commission in performing the duties of the commission which may include collecting and managing case review files, maintaining records and data, training on confidentiality and the suicide critical risk assessment process, and issuing the annual report of the commission.
9. A state employee who is a member of the commission is entitled to receive that employee's regular salary while performing official duties of the commission and is entitled to mileage and expense reimbursement as provided for under sections 44-08-04 and 54-06-09, to be paid by the employing entity. A member of the commission who is not a state employee is entitled to mileage and expense reimbursement as provided for under sections 44-08-04 and 54-06-09, to be paid by the department of health and human services. The department may provide per diem to a member who is not a state employee.

**SECTION 2. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES - SUICIDE FATALITY REVIEW COMMISSION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$15,000, or so much of the sum as may be necessary, to the department of health and human services for the purpose of funding the activities of the suicide fatality review commission, for the biennium beginning July 1, 2023, and ending June 30, 2025.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 242

### SENATE BILL NO. 2082

(State and Local Government Committee)  
(At the request of the Department of Health and Human Services)

AN ACT to amend and reenact sections 23-09-01, 23-09-03, 23-09-05, and 23-09-07 of the North Dakota Century Code, relating to food and lodging establishments and assisted living facilities.

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

<sup>151</sup> **SECTION 1. AMENDMENT.** Section 23-09-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **23-09-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Assisted living facility" means a building or structure containing a series of at least five living units operated as one entity to provide services for five or more individuals who are not related by blood, marriage, or guardianship to the owner or manager of the entity and which is kept, used, maintained, advertised, or held out to the public as a place that provides or coordinates individualized support services to accommodate the individual's needs and abilities to maintain as much independence as possible. An assisted living facility in this chapter includes a facility that is defined as an assisted living facility in any other part of the code. An assisted living facility does not include a facility that is a congregate housing facility, licensed as a basic care facility, or licensed under chapter 23-16, chapter 23-17.7, chapter 25-16, or section 50-11-01.4.
2. "Bakery" means an establishment or any part of an establishment that manufactures or prepares bread or bread products, pies, cakes, cookies, crackers, doughnuts, or other similar products, or candy, whether plain; chocolate or chocolate coated; mixed with nuts, fruits, or other fillers; covered with chocolate or other coating; and shaped, molded, or formed in various shapes. The term does not include food service establishments nor home cake decorators.
3. "Child care food service establishment" means food service that is prepared in a kitchen owned and operated by a child care provider licensed in accordance with chapter 50-11.1 for more than thirty children.
4. "Commissary" means a catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged, or stored, including a service center or base of operations directly from which mobile food units are supplied or serviced. The term does not include an area

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<sup>151</sup> Section 23-09-01 was also amended by section 8 of House Bill No. 1038, chapter 65.

or conveyance at a vending machine location used for the temporary storage of packaged food or beverages.

- 4-5. "Department" means the department of health and human services.
- 5-6. "Food establishment" means any fixed restaurant, limited restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, catering kitchen, delicatessen, bakery, grocery store, meat market, food processing plant, school, child care, mobile or temporary food establishment, or similar place in which food or drink is prepared for sale or service to the public on the premises or elsewhere with or without charge.
- 6-7. "Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer.
- 7-8. "Limited restaurant" means a food service establishment that is restricted to a specific menu as determined by the department or an establishment serving only prepackaged foods, such as frozen pizza and sandwiches, which receive no more than heat treatment and are served directly in the package or on single-serve articles.
- 8-9. "Lodging establishment" includes every building or structure, or any part thereof, which is kept, used, maintained, or held out to the public as a place where sleeping accommodations are furnished ~~for pay to transient guests for a charge~~. The term does not include ~~a facility providing personal care services directly or single structures with five or fewer guest rooms and ten or fewer total occupants, a series or group of buildings or structures containing five or fewer guest rooms and ten or fewer total occupants operated as one entity under a single ownership on the same property or physical location, or a facility providing personal care services directly~~ through contract services as defined in section 23-09.3-01 or 50-32-01.
- 9-10. "Mobile food unit" means a vehicle-mounted food service establishment designed to be readily movable.
- 40-11. "Proprietor" includes the person in charge of a food establishment, lodging establishment, or assisted living facility, whether as owner, lessee, manager, or agent.
- 44-12. "Pushcart" means a non-self-propelled vehicle limited to serving nonpotentially hazardous food or commissary-wrapped food maintained at proper temperatures.
- 42-13. "Restaurant" includes every building or other structure, or any part thereof, and all buildings in connection therewith, that are permanently kept, used, maintained, advertised, or held out to the public as a place where meals or lunches are served, but where sleeping accommodations are not furnished. The term includes a limited restaurant restricted to a specified menu.
- 43-14. "Retail food store" means any establishment or section of an establishment where food and food products are offered to the consumer and intended for offpremise consumption. The term includes a delicatessen that offers prepared food in bulk quantities only. The term does not include an

establishment that handles only prepackaged nonpotentially hazardous foods, roadside market that offers only fresh fruits and vegetables for sale, food service establishment, or food and beverage vending machine.

- 44-15. "Retail meat market" means a commercial establishment and buildings or structures connected with it, used to process, store, or display meat or meat products for retail sale to the public for human consumption. The term does not include a meat establishment operating under the federal or state meat inspection program.
- 45-16. "Salvage processing facility" means an establishment engaged in the business of reconditioning or by other means salvaging distressed merchandise for human consumption or use.
- 46-17. "Temporary food service establishment" means any food service establishment that operates at a fixed location for not more than fourteen consecutive days. The term does not include a nonprofit public-spirited organization or person providing a limited type of food service as defined in chapter 23-09.2.
18. "Transient guest" means occupancy of a guest room for a period of fewer than thirty consecutive days or one month, whichever is more.

**SECTION 2. AMENDMENT.** Section 23-09-03 of the North Dakota Century Code is amended and reenacted as follows:

**23-09-03. Exiting requirements.**

Every lodging establishment and assisted living facility constructed in the state shall have adequate exiting as defined by the state building code in chapter 54-21.3 and state fire code in chapter 18-01 with the following exceptions:

1. All lodging establishments and assisted living facilities in existence at the time of implementation of this section are required to continue with fire escapes previously provided for within this section providing that they are deemed adequate by the local fire authority having approval, or by the state fire marshal's office.
2. If the lodging establishment or assisted living facility is provided with exterior access balconies connecting the main entrance door of each unit to two stairways remote from each other.

**SECTION 3. AMENDMENT.** Section 23-09-05 of the North Dakota Century Code is amended and reenacted as follows:

**23-09-05. Fire escapes to be kept clear - Notice of location and use of fire escapes required.**

Access to fire escapes required under this chapter must be kept free and clear at all times of all obstructions of any nature. The proprietor of the lodging establishment or assisted living facility shall provide for adequate exit lighting and exit signs as defined in the state building code, chapter 54-21.3, and state fire code, chapter 18-01.

**SECTION 4. AMENDMENT.** Section 23-09-07 of the North Dakota Century Code is amended and reenacted as follows:

**23-09-07. Lodging establishments or assisted living facilities with elevators - Protection to prevent spread of fire.**

All new construction of, remodeling of, or additions to lodging establishments or assisted living facilities equipped with passenger or freight elevators must comply with state building code fire protection requirements and state fire code, chapter 18-01.

Approved March 20, 2023

Filed March 21, 2023

## CHAPTER 243

### HOUSE BILL NO. 1290

(Representatives Kreidt, Bellew, Hauck, Rohr)  
(Senator Lee)

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 basic care and nursing facility 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, ~~2024~~2023, and July 31, ~~2023~~2025, except if:
  - a. A nursing facility converts nursing facility beds to basic care;
  - b. An entity licenses bed capacity transferred as basic care bed capacity under section 23-16-01.1;
  - c. An entity demonstrates to the department that basic care services are not readily available within a fifty-mile [80.47-kilometer] 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 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
  - d. The department 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 or relicenses nursing facility beds delicensed after July 31, 2011, nursing facility beds may not be added to the state's licensed bed capacity during the period between August 1, ~~2024~~2023, and July 31, ~~2023~~2025. A nursing facility may not delicense nursing facility bed capacity, relicense nursing facility bed capacity, convert licensed nursing bed capacity to basic care bed capacity, revert licensed basic care bed capacity back to nursing facility bed capacity, or otherwise reconfigure licensed nursing facility bed capacity more than two times in a twelve-month period.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 244

### SENATE BILL NO. 2243

(Senators Dever, Larson, Paulson)  
(Representatives Karls, Kempenich, Louser)

AN ACT to amend and reenact sections 23-10-06.2, 23-10-12, 27-08.1-01, and 47-10-28 of the North Dakota Century Code, relating to the transferability, revocation, and suspension of licenses for a mobile home park, small claims court jurisdiction, and required disclosures to tenants residing in a mobile home park; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 23-10-06.2 of the North Dakota Century Code is amended and reenacted as follows:

##### **23-10-06.2. License transferability.**

The department shall transfer a license without charge if the proposed new owner applies in writing for a transfer of the license and certifies that the mobile home park, recreational vehicle park, or campground will be operated in accordance with this chapter. A new owner applying for a transfer under this section and a person holding a license issued under section 23-10-03, shall provide the name, address, and telephone number for the mobile home park managers and any individual possessing more than a twenty percent ownership interest in the entity subject to the license to the department once per calendar year. The department may assess a civil penalty not exceeding five thousand dollars for each violation of this section thirty days after issuing a notice of noncompliance. The civil penalty may be assessed without notice and a hearing. The civil penalty must be awarded to the department and deposited into the department's general operating fund for use in regulating compliance with this chapter. A person subject to a civil penalty pursuant to an order issued under this section may request a hearing before the department if a written request is made within ten days after the receipt of the order. Upon receipt of a proper and timely request for a hearing, the department shall conduct an adjudicative proceeding under this section in accordance with chapter 28-32, unless otherwise provided for by law. If the department prevails in an adjudicative proceeding under this section, the department may assess the nonprevailing party for all adjudicative proceeding and hearing costs, including reasonable attorney's fees, investigation fees, and costs and expenses of the action.

<sup>152</sup> **SECTION 2. AMENDMENT.** Section 23-10-12 of the North Dakota Century Code is amended and reenacted as follows:

##### **23-10-12. Revocation or suspension of license - Penalty for operating without license.**

1. The department may deny an application or take disciplinary action, up to and including suspension of a license for a mobile home park, recreational vehicle

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<sup>152</sup> Section 23-10-12 was also amended by section 36 of House Bill No. 1165, chapter 229.

park, or campground, and revocation of a license for a recreational vehicle park or campground, against any applicant or licensee upon the failure of the applicant or licensee to comply with this chapter or with any of the rules adopted by the health council and regulations promulgated by the department.

2. Before the department takes disciplinary action against a license, the department shall notify the licensee in writing of the reason disciplinary action is being considered and shall provide a reasonable amount of time for correction to be made. Action taken under the authority granted in this section must comply with chapter 28-32. Any person who maintains or operates a mobile home park, recreational vehicle park, or campground without first obtaining a license, or who operates the same ~~after revocation~~during suspension of the license, is guilty of an infraction.

**SECTION 3. AMENDMENT.** Section 27-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**27-08.1-01. Small claims court - Jurisdictional limits - Venue.**

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, a tenant's claim for civil damages under subsection 9 of section 47-10-28, 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 fifteen thousand dollars.
2. The proceedings in this court must be commenced:
  - a. If the defendant is a corporation, limited liability company, or a partnership, in any county in which the defendant has a place of business or in any county in which the subject matter of the claim occurred.
  - b. If the claim is for collection of a check written without sufficient funds or without an account, in the county where the check was passed, or in the county of the defendant's residence or place of business.
  - c. If the defendant is an individual and the claim is for collection of an open account on which credit has been extended:
    - (1) In the county of the defendant's residence or place of business; or
    - (2) If the amount of the claim is less than one thousand dollars and is not from a telephone or mail order transaction, in the county where the transaction occurred or in the county of the defendant's residence or place of business.
  - d. If the defendant is an individual and the claim is not made under subdivision b or c, in the county of the defendant's residence.
  - e. If the defendant is an individual and the claim arose as the result of the defendant's lease of real property or as the result of a dispute over disposition of earnest money or other money deposit arising from a contract to purchase real property, in the county where the real property is

located unless the plaintiff and the defendant consent in writing to a proceeding in a different county.

- f. If the plaintiff is a political subdivision and the claim is for a public utility debt, in the county in which the political subdivision is located.
  - g. If the claim is for civil damages under subsection 9 of section 47-10-28, in the county in which the mobile home park is located.
3. Except for an action under subdivision c, e, ~~or f,~~ or g of subsection 2, the defendant may elect to remove the action to a small claims court in the defendant's county of residence. A claim may not be filed by an assignee of that claim. A garnishment or attachment may not issue from this court until after judgment is entered.

**SECTION 4. AMENDMENT.** Section 47-10-28 of the North Dakota Century Code is amended and reenacted as follows:

**47-10-28. Mobile home park - Ownership - Transfer of ownership - Tenant rights - Penalty.**

1. A person that owns or purchases an existing mobile home park shall:
  - a. Obtain an annual license under section 23-10-03;
  - b. Designate an official local office, except if the mobile home park contains fewer than twenty-six lots, which must be operational on the fifth business day after the change of ownership;
  - c. The mobile home park shall:
    - (1) Have a designated telephone number manned on weekdays between the hours of eight a.m. and five p.m.;
    - (2) Have an operational emergency contact number manned at all times;
    - (3) Designate at least one individual for the property who has the authority to make decisions on behalf of and perform, or direct the performance of, duties imposed on the owner; and
    - (4) Provide a tenant with the contact information of the individual under paragraph 3;
  - d. Provide written notice to a tenant of the mobile home park regarding the change of ownership within five business days after the change of ownership becomes effective. The written notice must include the information required under subdivision c; ~~and~~
  - e. Acknowledge receipt of tenant inquiries or complaints regarding the park, pursuant to section 23-10-10.1, within two business days of receiving the inquiry or complaint;
  - f. Provide to each tenant, upon a written request by the tenant or the tenant's agent, a copy of the existing lease terms along with any modifications or amendments, within ten business days of receipt of a written request;



separate charge based on actual usage. An owner may not charge a tenant more than the actual cost per unit amount paid by the landlord to the utility service provider, except for a reasonable administrative fee that may not exceed three dollars. An owner may not charge or back charge for the utility services of a tenant paying for the services as a portion of the tenant's monthly rental obligation, unless the cost of providing the services increases. If the cost of providing utility services increases, an owner of a mobile home park may charge a tenant a reasonable amount to cover the increased cost of providing the service. The owner shall provide the tenant access to the records of meter readings taken at the mobile home lot of the tenant.

9. A person that violates a provision of this section is subject to a civil penalty not ~~exceeding one thousand five hundred dollars but not exceeding the greater of ten thousand dollars or actual damages, whichever is less~~, plus reasonable actual attorney's fees and costs.
10. A mobile home park license, issued under chapter 23-10, may be suspended by the district court of the county where the mobile home park is situated for a violation of this section. The holder of the mobile home park license must be assessed a civil penalty for each day the holder's license remains suspended. The amount of the daily penalty is equal to half of the total rent listed on the rent roll for the mobile home park divided by the number of days in that month. The license holder must prove each violation has been remedied and has satisfied all civil penalties assessed before the license holder's license may be reinstated. The district court has discretion over the terms to be satisfied before a license is reinstated. If a license holder fails to comply with the terms of the district court's order, the district court may revoke the holder's license. All park tenants must be allowed to continue to reside in the mobile home park through the duration of the license suspension, unless the department of health and human services takes further disciplinary action against the license under chapter 23-10. During the period of suspension, the license holder or the license holder's agent may not modify the park rules or regulations, modify any tenant's rental arrangement, increase any tenant's rental rate, or terminate any tenant's lease without cause.
11. In a dispute between a landlord and a tenant under this section, the district court of the county in which the dispute arose has original jurisdiction over the dispute relating to the suspension of a license. For the recovery of civil damages under subsection 9, the tenant may elect to commence the action in small claims court or district court. If an action between a landlord and tenant is commenced, the tenant shall continue paying rent and comply with all park rules and regulations in effect at the time the action was commenced. During a pending action under this section, the license holder or the license holder's agent may not modify the park rules or regulations, modify the tenant's rental arrangement, increase a tenant's monthly rental rate, or terminate a tenant's lease without cause.

Approved April 13, 2023

Filed April 14, 2023

## CHAPTER 245

### HOUSE BILL NO. 1207

(Representatives D. Anderson, Fegley, Thomas)  
(Senator Vedaa)

AN ACT to create and enact a new section to chapter 23-12 of the North Dakota Century Code, relating to the display of vaccine adverse event data.

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

**SECTION 1.** A new section to chapter 23-12 of the North Dakota Century Code is created and enacted as follows:

#### **Vaccine adverse event data - Website.**

The department of health and human services shall prominently display, on a website maintained by the department, a link to the federal vaccine adverse event reporting system, along with instructions on how to report an adverse event and how to access state-specific data. The department may compile its own data for use on this website.

Approved April 21, 2023

Filed April 24, 2023

## CHAPTER 246

### HOUSE BILL NO. 1111

(Representative Hoverson)  
(Senator Magrum)

AN ACT to create and enact a new section to chapter 23-12 of the North Dakota Century Code, relating to international health regulations.

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

**SECTION 1.** A new section to chapter 23-12 of the North Dakota Century Code is created and enacted as follows:

#### **International health regulations.**

A health-related regulation of an international health organization is not enforceable in this state unless enacted through legislation or a signed executive order.

Approved April 6, 2023

Filed April 10, 2023

## CHAPTER 247

### HOUSE BILL NO. 1229

(Representatives D. Ruby, Christensen, Headland, Kasper, Nathe, Porter, Rios, M. Ruby)  
(Senators Larsen, Meyer, Vedaas)

AN ACT to amend and reenact section 23-12-10 of the North Dakota Century Code, relating to cigar lounges.

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

**SECTION 1. AMENDMENT.** Section 23-12-10 of the North Dakota Century Code is amended and reenacted as follows:

#### **23-12-10. Smoking restrictions - Exceptions - Retaliation - Application.**

1. In order to protect the public health and welfare and to recognize the need for individuals to breathe smoke-free air, smoking is prohibited in all enclosed areas of:
  - a. Public places; and
  - b. Places of employment.
2. Smoking is prohibited within twenty feet [6.10 meters] of entrances, exits, operable windows, air intakes, and ventilation systems of enclosed areas in which smoking is prohibited. Owners, operators, managers, employers, or other persons who own or control a public place or place of employment may seek to rebut the presumption that twenty feet [6.10 meters] is a reasonable minimum distance by making application to the director of the local health department or district in which the public place or place of employment is located. The presumption will be rebutted if the applicant can show by clear and convincing evidence that, given the unique circumstances presented by the location of entrances, exits, windows that open, ventilation intakes, or other factors, smoke will not infiltrate or reach the entrances, exits, open windows, or ventilation intakes or enter into such public place or place of employment and, therefore, the public health and safety will be adequately protected by a lesser distance.
3. The following areas are exempt from subsections 1 and 2:
  - a. Private residences, except those residences used as a child care, adult day care, or health care facility subject to licensure by the department of health and human services.
  - b. Outdoor areas of places of employment, except those listed in subsection 2.
  - c. Any area that is not commonly accessible to the public and which is part of an owner-operated business having no employee other than the owner-operator.

- d. A cigar lounge, which has a valid certificate issued by the tax commissioner under this subdivision; has a humidor on the premises; is enclosed by solid walls or windows, a ceiling, and a solid door; and is equipped with a ventilation system by which exhausted air is not recirculated to nonsmoking areas and smoke is not backstreamed into nonsmoking areas. A cigar lounge meeting the requirements of this subdivision may permit the smoking of cigars purchased on the premises, but may not permit the smoking of any other product on the premises.
- (1) A cigar lounge asserting the lounge meets the requirements of this subdivision shall report to the tax commissioner before February first of each year, on a form prescribed by the commissioner, the revenue from the previous calendar year generated from the sale of cigars as a percentage of annual gross income. Upon receipt of a report asserting compliance with the annual gross income requirements of this subdivision, the commissioner shall issue an annual certificate. The commissioner is not required to confirm the accuracy of information reported but may not issue a certificate absent supporting documentation from the lounge. Information reported to the commissioner under this subdivision is subject to the confidentiality provisions of section 57-39.2-23.
- (2) For purposes of this subdivision:
- (a) "Cigar" means an individual roll of tobacco which has a wrapper or cover of whole leaf tobacco; does not contain filler other than tobacco filler; does not contain binder other than tobacco binder; does not contain additives other than water; does not contain a filter, tip, or nontobacco mouthpiece; weighs at least six pounds per thousand count; and is made by hand, except to allow for the use of a manually operated machine to assist in bunching, rolling, and binding.
- (b) "Cigar lounge" means a business dedicated, in whole or in part, to the smoking of cigars which generates fifteen percent or more of the business's annual gross income from the sale of cigars.
4. Smoking as part of a traditional American Indian spiritual or cultural ceremony is not prohibited.
5. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or other person because that person asserts or exercises any rights afforded by this section or reports or attempts to prosecute a violation of this section. An employee who works in a setting where an employer allows smoking does not waive or surrender any legal rights the employee may have against the employer or any other party. Violations of this subsection shall be a class B misdemeanor.
6. This section may not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.
7. Notwithstanding any other provision of this chapter, an owner, operator, manager or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place.

Approved April 10, 2023

Filed April 11, 2023

## CHAPTER 248

### SENATE BILL NO. 2274

(Senators Clemens, Beard, Larsen, Magrum)  
(Representative Vetter)

AN ACT to amend and reenact section 23-12-20 of the North Dakota Century Code, relating to vaccination and infection information.

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

**SECTION 1. AMENDMENT.** Section 23-12-20 of the North Dakota Century Code is amended and reenacted as follows:

**23-12-20. COVID-19 vaccination and infection information. (~~Repealed effective August 1, 2023~~)**

1. Neither a state government entity nor any of its political subdivisions, agents, or assigns may:
  - a. Require documentation, whether physical or electronic, for the purpose of certifying or otherwise communicating the following before providing access to property, funds, or services:
    - (1) An individual's COVID-19 vaccination status or vaccination status for a vaccine that is under emergency use authorization from the federal food and drug administration;
    - (2) The presence of COVID-19 pathogens, antigens, or antibodies; or
    - (3) An individual's COVID-19 post-transmission recovery status;
  - b. Otherwise publish or share an individual's COVID-19 vaccination record or similar health information, except as specifically authorized by the individual or otherwise authorized by statute; or
  - c. Require a private business to obtain documentation, whether physical or electronic, for purposes of certifying or otherwise communicating the following before employment or providing access to property, funds, or services based on:
    - (1) An individual's COVID-19 vaccination status or vaccination status for a vaccine that is under emergency use authorization from the federal food and drug administration;
    - (2) The presence of COVID-19 pathogens, antigens, or antibodies; or
    - (3) An individual's COVID-19 post-transmission recovery status.
2. Subsection 1 does not apply to the department of corrections and rehabilitation, a correctional facility as defined under section 12-44.1-01, the state hospital, or a public health unit.

3. A private business located in this state or doing business in this state may not require a patron, client, or customer in this state to provide any documentation certifying COVID-19 vaccination or vaccination authorized by the federal food and drug administration under emergency use authorization, the presence of COVID-19 pathogens, antigens, or antibodies, or COVID-19 post-transmission recovery to gain access to, entry upon, or services from the business. This subsection does not apply to a developmental disability residential facility or a health care provider, including a long-term care provider, basic care provider, and assisted living provider. As used in this subsection, a private business does not include a nonprofit entity that does not sell a product or a service.
4. This section may not be construed to interfere with an individual's rights to access that individual's own personal health information or with a person's right to access personal health information of others which the person otherwise has a right to access.
5. Subsection 1 is not applicable to the state board of higher education, the university system, or institutions under the control of the state board of higher education to the extent the entity has adopted policies and procedures governing the type of documentation required, the circumstances under which such documentation may be shared, and exemptions from providing such documentation.
6. This section is not applicable during a public health disaster or emergency declared in accordance with chapter 37-17.1.
7. As used in this section, the term "COVID-19" means severe acute respiratory syndrome coronavirus 2 identified as SARS-CoV-2 and any mutation or viral fragments of SARS-CoV-2.

Approved April 18, 2023

Filed April 19, 2023

## CHAPTER 249

### HOUSE BILL NO. 1502

(Representatives Hoverson, Bellew, Dyk, Fisher, Heilman, Henderson, Marschall,  
Meier, D. Ruby)  
(Senators Paulson, Weston)

AN ACT to create and enact a new section to chapter 23-16 of the North Dakota Century Code, relating to access to hospital care.

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

**SECTION 1.** A new section to chapter 23-16 of the North Dakota Century Code is created and enacted as follows:

#### **COVID-19 vaccination status - Access to care.**

A hospital may not deny health care treatment or services to an individual based on that individual's severe acute respiratory syndrome coronavirus 2, identified as SARS-CoV-2 (COVID-19) vaccination status.

Approved April 7, 2023

Filed April 10, 2023

## CHAPTER 250

### HOUSE BILL NO. 1050

(Human Services Committee)

(At the request of the Department of Health and Human Services)

AN ACT to amend and reenact sections 23-16-01, 50-31-02, 50-31-04, 50-31-05, and 50-31-08 of the North Dakota Century Code, relating to licensure, inspection, suspension, and revocation of a substance abuse treatment program.

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

**SECTION 1. AMENDMENT.** Section 23-16-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **23-16-01. Licensure of medical hospitals and state hospitals.**

After July 1, 1947, no person, partnership, association, corporation, limited liability company, county or municipal corporation, or agency thereof, which maintains and operates organized facilities for the diagnosis, treatment, or care of two or more nonrelated persons suffering from illness, injury, or deformity or where obstetrical or other care is rendered over a period exceeding twenty-four hours, may be established, conducted, or maintained in the state of North Dakota without obtaining annually a license therefor in the manner hereinafter provided in sections 23-16-02 and 23-16-03. Chiropractic hospitals, sanatoriums, American society of addiction medicine level 3.7 substance use treatment programs licensed by the department of health and human services that are independent from a medical hospital, and hospitals such as those for unmarried mothers maintained and operated by the department of health and human services are not required to obtain a license under this chapter.

In the case of emergency or transfer beds attached to and forming a part of a licensed medical doctor's office, the department of health and human services has the right of inspection, but no license may be required under the provisions of this chapter when the number of such beds does not exceed four.

**SECTION 2. AMENDMENT.** Section 50-31-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **50-31-02. License required.**

A person, partnership, association, corporation, or limited liability company without a license may not establish, conduct, or maintain in this state a substance ~~abuse~~use disorder treatment program for the care of persons addicted to alcohol or other drugs. The department, in accordance with the laws of this state governing injunctions and other process, may maintain an action in the name of the state against a person, partnership, association, corporation, or limited liability company for establishing, conducting, managing, or operating a substance ~~abuse~~use disorder treatment program without a license.

**SECTION 3. AMENDMENT.** Section 50-31-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-31-04. Inspection and evaluation of licensed premises.**

Every licensed substance ~~abuse~~use disorder treatment program shall obtain and provide to the department a local or state authority certification as to the safety of the premises. The department shall evaluate every licensed substance ~~abuse~~use disorder treatment program according to the rules adopted by the department.

**SECTION 4. AMENDMENT.** Section 50-31-05 of the North Dakota Century Code is amended and reenacted as follows:

**50-31-05. Issuance, suspension, and revocation of license.**

1. The department may issue licenses to operate substance ~~abuse~~use disorder treatment programs, for a period of three years, which are found to comply with the provisions of this chapter and rules adopted by the department.
2. The department may suspend or revoke a license if a program violates any of the rules adopted by the department.
3. Before a license may be suspended or revoked, written notice by registered mail, personal delivery, or electronic mail must be given to the licenseholder. The licenseholder must be furnished with a copy of the notice by registered mail or personal delivery. If a license is revoked, a new application for a license may be considered by the department when the conditions upon which the revocation were based have been corrected and evidence of this fact has been satisfactorily furnished. A new license may then be granted after proper inspection has been made and the applicant has complied with all rules adopted by the department. Within thirty days after service of the written charges, the applicant or licensee may submit to the department a written request for an administrative hearing as provided in chapter 28-32.

**SECTION 5. AMENDMENT.** Section 50-31-08 of the North Dakota Century Code is amended and reenacted as follows:

**50-31-08. Opioid treatment programs - Licensure required - Rules.**

1. To operate in this state, an opioid treatment program must be granted a license from the department, certification from the United States department of health and human services substance abuse and mental health services administration, and registration from the United States department of justice drug enforcement administration.
2. The department may license a substance ~~abuse~~use disorder treatment program to operate an opioid treatment program in the state. A separate license is required for each location at which an opioid treatment program is operated under this section.
3. The department shall adopt rules relating to licensing and monitoring opioid treatment programs, including rules for:
  - a. Standards for approval and maintenance of license;
  - b. Assessment of need for an opioid treatment program in the proposed location;
  - c. Patient eligibility for admission to an opioid treatment program;

- d. Treatment standards, including counseling and drug testing requirements; and
  - e. Measures to prevent the diversion to illegal use of any drug used by a program to treat an opioid addiction.
4. Each state-licensed opioid treatment program shall submit by electronic means information regarding each prescription dispensed for a controlled substance to the state's prescription drug monitoring program, unless specifically exempted by federal law.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 251

### SENATE BILL NO. 2153

(Senators Lee, Hogan, K. Roers)  
(Representatives Dobervich, Rohr, Weisz)

AN ACT to amend and reenact section 23-35-02 of the North Dakota Century Code, relating to the core functions of public health units.

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

**SECTION 1. AMENDMENT.** Section 23-35-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **23-35-02. Public health units - Core functions.**

1. ~~All land in the state must be in a public health unit before January 1, 2001. The department of health and human services may issue rules defining the core functions a public health unit shall undertake.~~
2. At a minimum, a public health unit shall provide the following core functions:
  - a. Communicable disease control, which must include:
    - (1) Conducting of disease surveillance for the purpose of preventing and controlling communicable disease, with assistance from the department.
    - (2) Assurance of the availability of community-based programs to provide communicable disease prevention and control services.
    - (3) Recognition, identification, and response to a communicable disease event, in collaboration with the department.
  - b. Chronic disease and injury prevention, which must include conducting programs to reduce the burden of chronic disease and injury through policy, system, and environmental change approach; prevention screening; and education.
  - c. Environmental public health, which must include:
    - (1) Prevention of environmental hazards by the provision of information and education to facility operators and managers and to community members.
    - (2) Assurance of the availability of environmental health services to prevent and respond to community and residential environmental hazards.
  - d. Maternal, child, and family health, which must include:

- (1) Assessment and monitoring of maternal and child health status to identify and address problems.
  - (2) Implementation of programs to promote the health of women, children, and youth, and their families, through policy, system, and environmental change approaches; prevention screenings; and education.
- e. Access to clinical care, which must include:
- (1) Collaboration with health care system partners to foster access to clinical care.
  - (2) Facilitation of linkages and referrals for appropriate clinical care, services, and resources.

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 252

### SENATE BILL NO. 2085

(Human Services Committee)

(At the request of the Department of Health and Human Services)

AN ACT to amend and reenact sections 23-47-02 and 39-21-41.4 of the North Dakota Century Code, relating to system registries for a comprehensive emergency cardiovascular medical system and safety belt usage by emergency medical services personnel; and to provide for a legislative management study.

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

**SECTION 1. AMENDMENT.** Section 23-47-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **23-47-02. Acute cardiovascular emergency medical system - Duties of department.**

1. Following consultation with and receipt of a recommendation of the acute cardiovascular emergency medical system of care advisory committee, the department shall establish and maintain a comprehensive emergency cardiovascular medical system for the state. The system must include standards for the following components:
  - a. A system plan.
  - b. Prehospital emergency medical services.
  - c. Hospitals, for which the standards must include:
    - (1) Standards for designation, redesignation, and dedesignation of receiving and referring centers.
    - (2) Standards for evaluation and quality improvement programs for designated centers.
    - (3) Recognition of a hospital as a STEMI receiving center or as a STEMI referring center. In making such recognition, the standards must include consideration of whether the hospital is:
      - (a) Accredited as a mission: lifeline STEMI receiving center or mission: lifeline STEMI referring center by the society of cardiovascular patient care and the American heart association accreditation process; or
      - (b) Accredited by a department-approved, nationally recognized organization that provides mission: lifeline STEMI receiving center and mission: lifeline STEMI referring center accreditation or a substantive equivalent.

- d. System registries, for which the components must include a plan for achieving continuous quality improvement in the quality of care provided under the statewide system, including for STEMI response and treatment.
  - (1) In implementing this plan, the department shall maintain a statewide STEMI heart attack database that aggregates information and statistics on heart attack care. ~~The department shall utilize the ACTION registry get with the guidelines data platform, or other equivalent platform.~~
  - (2) To the extent possible, the department shall coordinate with national voluntary health organizations involved in STEMI heart attack quality improvement to avoid duplication and redundancy.
  - (3) Designated receiving centers shall participate in the registry.
2. The proceedings and records of the program are not subject to subpoena, discovery, or introduction into evidence in any civil action arising out of any matter that is the subject of consideration by the program.

<sup>153</sup> **SECTION 2. AMENDMENT.** Section 39-21-41.4 of the North Dakota Century Code is amended and reenacted as follows:

**39-21-41.4. Use of safety belts required in certain motor vehicles - Enforcement - Evidence.**

Subject to the limitations of this section and section 39-21-41.5, a driver may not operate upon a highway a motor vehicle designed for carrying fewer than eleven passengers, which was originally manufactured with safety belts unless each front seat occupant is wearing a properly adjusted and fastened safety belt. This section does not apply to a child in a child restraint or safety belt in accordance with section 39-21-41.2; to drivers of implements of husbandry; to operators of farm vehicles as defined in subsection 5 of section 39-04-19; to rural mail carriers while on duty delivering mail; to an occupant with a medical or physically disabling condition that prevents appropriate restraint in a safety belt, if a qualified physician, physician assistant, or advanced practice registered nurse states in a signed writing the nature of the condition and the reason restraint is inappropriate; to an occupant who is an emergency medical services personnel, during the provision of direct patient care; or when all front seat safety belts are in use by other occupants. A physician, physician assistant, or advanced practice registered nurse who, in good faith, provides a statement that restraint would be inappropriate is not subject to civil liability. A violation for not wearing a safety belt under this section is not, in itself, evidence of negligence. The fact of a violation of this section is not admissible in any proceeding other than one charging the violation.

**SECTION 3. LEGISLATIVE MANAGEMENT STUDY - EMERGENCY MEDICAL SERVICES.** During the 2023-24 interim, the legislative management shall conduct a comprehensive study of the delivery of emergency medical services in the state. The study must include consideration of funding, taxation, access critical areas, demographics, volunteer training, volunteer retention, systems approach to rural areas, employment options, including access to a public safety pension, and educational reimbursements. The study shall also include consideration of distressed ambulance services, which are ambulance services that have indicated an intention

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<sup>153</sup> Section 39-21-41.4 was also amended by section 1 of Senate Bill No. 2362, chapter 362.

to close or change their license level, or an ambulance service that fails to meet performance standards as established by the department of health and human services. The legislative management shall report its findings and recommendations, together with any legislation to implement the recommendations, to the sixty-ninth legislative assembly.

Approved April 26, 2023

Filed April 26, 2023



# ENVIRONMENTAL QUALITY

## CHAPTER 253

### HOUSE BILL NO. 1108

(Representative Hoverson)  
(Senator Magrum)

AN ACT to create and enact a new section to chapter 23.1-01 of the North Dakota Century Code, relating to international climate control regulations.

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

**SECTION 1.** A new section to chapter 23.1-01 of the North Dakota Century Code is created and enacted as follows:

#### **International climate control regulations.**

A climate control-related regulation of an international organization, either directly through the organization or indirectly through law or regulation, is not enforceable on this state.

Approved March 22, 2023

Filed March 23, 2023

## CHAPTER 254

### HOUSE BILL NO. 1089

(Energy and Natural Resources Committee)  
(At the request of the Department of Environmental Quality)

AN ACT to create and enact a new subsection to section 23.1-08-03 of the North Dakota Century Code, relating to improving efficiencies in the department of environmental quality; to amend and reenact subsection 1 of section 23.1-08-09 and section 61-28.1-12 of the North Dakota Century Code, relating to improving efficiencies in the department of environmental quality; to repeal section 23.1-08-05 of the North Dakota Century Code, relating to improving efficiencies in the department of environmental quality; and to provide an effective date.

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

**SECTION 1.** A new subsection to section 23.1-08-03 of the North Dakota Century Code is created and enacted as follows:

Adopt rules to establish standards and requirements for solid waste pilot projects.

**SECTION 2. AMENDMENT.** Subsection 1 of section 23.1-08-09 of the North Dakota Century Code is amended and reenacted as follows:

1. The department may issue permits for solid waste management facilities and solid waste transporters. A person may not own, operate, or use a facility for solid waste disposal or transport solid wastes without a valid permit. Upon receipt of a permit application, the department shall give public notice, in the official newspaper of the county in which the facility is to be located, that the department is considering an application for a solid waste management facility. The notice must state the name of the applicant, the location of the facility, and a description of the facility. The department shall require as a condition of a permit for a solid waste management facility, not owned or operated by the state or a political subdivision, that any entity that controls the permitholder agrees to accept responsibility for any remedial measures, closure and postclosure care, or penalties incurred by the permitholder. For purposes of this section, "control" means ownership or control, directly, indirectly, or through the actions of one or more persons of the power to vote twenty-five percent or more of any class of voting shares of a permitholder, or the direct or indirect power to control in any manner the election of a majority of the directors of a permitholder, or to direct the management or policies of a permitholder, whether by individuals, corporations, partnerships, trusts, or other entities or organizations of any type. All permits are ~~nontransferable~~transferable, are for a term of not more than ten years from the date of issuance, and are conditioned upon the observance of the laws of the state and the rules adopted under this chapter.

**SECTION 3. AMENDMENT.** Section 61-28.1-12 of the North Dakota Century Code is amended and reenacted as follows:

#### **61-28.1-12. Department - Powers and duties - Administration.**

The department has the following powers and duties and shall administer the drinking water treatment revolving loan fund as follows:

1. To apply for and accept grants of money from the United States environmental protection agency or other federal agencies which must be deposited in the drinking water treatment revolving loan fund to be used for purposes authorized under the Safe Drinking Water Act, including the following:
  - a. To provide loans or loan guarantees, or other financial assistance, to community water systems and nonprofit noncommunity water systems eligible for assistance from the revolving loan fund.
  - b. As a source of revenue and security for the payment of principal and interest on bonds issued by the state through the public finance authority if the bond proceeds are deposited in the revolving loan fund.
  - c. To buy or refinance debt obligations issued after July 1, 1993, to finance a project eligible for assistance from the revolving loan fund.
  - d. To guarantee or purchase insurance for debt obligations issued to finance a project eligible for assistance from the revolving loan fund.
  - e. To provide other financial and technical assistance and to make any other expenditure authorized under the Safe Drinking Water Act.
  - f. To earn interest before the disbursement of financial or technical assistance.
  - g. To pay administrative expenses associated with the revolving loan fund as authorized under the Safe Drinking Water Act.
2. To administer the drinking water treatment revolving loan fund as established. The department may enter into contracts and other agreements in connection with the operation of the drinking water treatment revolving loan fund to the extent necessary or convenient for the implementation of the drinking water treatment revolving loan fund. The department may combine the financial administration of the drinking water treatment revolving loan fund and the financial administration of the water pollution control revolving loan fund established under chapter 61-28.2. The department may cross-collateralize the drinking water treatment revolving loan fund and the water pollution control revolving loan fund as authorized by the administrator of the federal environmental protection agency under the Safe Drinking Water Act.
3. To administer and disburse funds ~~with the approval of the state water commission~~ and in accordance with section 1452(a) of the federal Safe Drinking Water Act [42 U.S.C. 300j], as amended.
4. To establish assistance priorities and to expend grant funds pursuant to the priority list for the drinking water treatment revolving loan fund, ~~after consulting with and obtaining the approval of the state water commission.~~
5. To adopt rules necessary for administering the drinking water treatment revolving loan fund.

The governor, or the governor's designee, may transfer grant funds from the drinking water treatment revolving loan fund to the water pollution control revolving loan fund

established by chapter 61-28.2 and from the water pollution control revolving loan fund to the drinking water treatment revolving loan fund, as authorized by the Safe Drinking Water Act.

**SECTION 4. REPEAL.** Section 23.1-08-05 of the North Dakota Century Code is repealed.

**SECTION 5. CONTINGENT EFFECTIVE DATE.** Section 2 of this Act becomes effective upon the receipt by the legislative council of the certification from the department of environmental quality that solid waste management facility and transporter permit transfer rules have been adopted.

Approved March 20, 2023

Filed March 21, 2023

## CHAPTER 255

### HOUSE BILL NO. 1090

(Energy and Natural Resources Committee)  
(At the request of the Department of Environmental Quality)

AN ACT to amend and reenact section 23.1-08-04 and subsection 2 of section 23.1-08-08 of the North Dakota Century Code, relating to coal combustion residuals and disposal of wind turbine blades; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 23.1-08-04 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-08-04. Coal combustion residuals - Present use and disposal deemed acceptable.**

Notwithstanding any other provision of law, the legislative assembly deems the present use and disposal of coal combustion residuals to be acceptable and that present regulation allows for the beneficial use of coal combustion residuals in concrete, for other construction applications, and for other innovative uses and allows for safe disposal without coal combustion residuals being regulated as a hazardous waste. For purposes of regulating coal combustion residuals, the term "ground water" means water below the land surface in a zone of saturation. If a federal law or regulation is adopted pertaining to the use and disposal of coal combustion residuals, this section does not prohibit the state from seeking state primacy of the federal program.

**SECTION 2. AMENDMENT.** Subsection 2 of section 23.1-08-08 of the North Dakota Century Code is amended and reenacted as follows:

2. Except as provided in subsection 3, a person may not place in municipal waste or discard or dispose of in a landfill lead-acid batteries, used motor oil, wind turbine blades, or major appliances.

**SECTION 3. EMERGENCY.** Section 1 of this Act is declared to be an emergency measure.

Approved February 23, 2023

Filed February 23, 2023

## CHAPTER 256

### SENATE BILL NO. 2074

(Energy and Natural Resources Committee)  
(At the request of the Department of Environmental Quality)

AN ACT to amend and reenact section 23.1-11-08 of the North Dakota Century Code, relating to ground water monitoring.

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

**SECTION 1. AMENDMENT.** Section 23.1-11-08 of the North Dakota Century Code is amended and reenacted as follows:

#### **23.1-11-08. Access for ground water monitoring.**

The department may request landowners or operators allow access for monitoring of ground water and of soils at a depth where pesticides may threaten ground water. If the department is denied access by the landowner or operator, the department may apply to any court of competent jurisdiction for authorization to obtain access. The court, upon the application and compliance with chapter 29-29.1, may issue the authorization for the purposes requested. After consultation with the landowner or operator, the department shall conduct the monitoring in a manner that causes the least possible economic impact or hindrance to the landowner's or operator's operations. The names and addresses of landowners and operators who participate in a pesticide ground water monitoring program ~~may not be linked, in any public disclosure, to the findings of the program unless it is determined by rule that a compelling public interest justifies the disclosure. Without that determination, disclosure of the information is a violation of section 12.1-13-01~~ are exempt under section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. This section does not apply to ground water monitoring from wells that were installed or required to be installed by a state agency.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 257

### SENATE BILL NO. 2075

(Energy and Natural Resources Committee)  
(At the request of the Department of Environmental Quality)

AN ACT to amend and reenact subsection 13 of section 23.1-12-02 and subdivision a of subsection 1 of section 23.1-12-18 of the North Dakota Century Code, relating to the definition of tank and corrective action reimbursement for petroleum releases.

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

**SECTION 1. AMENDMENT.** Subsection 13 of section 23.1-12-02 of the North Dakota Century Code is amended and reenacted as follows:

13. "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, ethanol, or biodiesel. 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:
    - (1) Regulated under the Natural Gas Pipeline Safety Act of 1968.
    - (2) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979.
    - (3) Regulated under state laws comparable to the provisions of law in paragraph 1 or 2, if the facility is an interstate pipeline facility.
  - 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.
- o. A tank used to store ethanol or biodiesel for wholesale purposes with a capacity of greater than twenty thousand gallons [75708.24 liters].

**SECTION 2. AMENDMENT.** Subdivision a of subsection 1 of section 23.1-12-18 of the North Dakota Century Code is amended and reenacted as follows:

- 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, rules relating to infrastructure compatibility, and all rules relating to health and safety which were in effect at the time of the release, the tank was in substantial compliance with all applicable rules of the United States environmental protection agency, the state fire marshal, and the department. The department shall determine substantial compliance by considering:~~
  - (1) The purposes of this chapter;
  - (2) The adverse effect that any violation of the rules may have had on the tank, thereby causing or contributing to the release; and
  - (3) The extent of the remedial action required;

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 258

### SENATE BILL NO. 2118

(Energy and Natural Resources Committee)  
(At the request of the Department of Environmental Quality)

AN ACT to amend and reenact sections 23.1-15-01, 23.1-15-03, 23.1-15-04, and 23.1-15-05, subsection 1 of section 23.1-15-07, and sections 23.1-15-08 and 23.1-15-09 of the North Dakota Century Code, relating to abandoned motor vehicles; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 23.1-15-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **23.1-15-01. Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. "Abandoned motor vehicle" means a motor vehicle, as defined in section 39-01-01, that has remained for a period of more than forty-eight hours on public property illegally or lacking vital component parts that are essential to the mechanical functioning of the vehicle, including the motor, drive train, or wheels, or is located on private property without consent of the person in control of the property or in an inoperable condition such that it has no substantial potential further use consistent with its usual functions, unless it is kept in an enclosed garage or storage building. It also means a motor vehicle voluntarily surrendered by its owner to a person duly licensed under section 23.1-15-09 permitted scrap iron processor. An antique automobile, as defined in section 39-04-10.4, and other motor vehicles to include parts car and special interest vehicles, may not be considered an abandoned motor vehicle within the meaning of this chapter.
2. "Collector" means the owner of one or more special interest vehicles that collects, purchases, acquires, trades, or disposes of special interest vehicles or parts of special interest vehicles for the person's own use in order to restore, preserve, and maintain a special interest vehicle or antique vehicle.
3. "Commercial towing service" means a registered business in North Dakota that tows motor vehicles.
4. "Department" means the department of environmental quality.
5. "Emergency towing" means the towing of a vehicle due to a motor vehicle accident, mechanical breakdown on public roadway, or other emergency-related incident necessitating vehicle removal for public safety with or without the owner's consent.
6. "Parts car" means a motor vehicle generally in nonoperable condition which is owned by the collector to furnish parts to restore, preserve, and maintain a special interest vehicle or antique vehicle.

7. "Permitted scrap iron processor" means a scrap iron processor holding a valid permit issued by the department under chapter 23.1-08.
8. "Scrap tire" means a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect.
9. "Secured party" means an insurer covering the abandoned motor vehicle under an insurance policy.
10. "Special interest vehicle" means a motor vehicle that is at least twenty years old and has not been altered or modified from original manufacturer's specifications and, because of its historic interest, is being preserved by hobbyists.
- 8-11. "Submerged vehicle" means a motor vehicle or a recreational vehicle as defined in section 39-01-01 or a trailer that is submerged in a body of water.
12. "Unit of government" includes a state department or agency, a county, city, township, or other political subdivision.
9. ~~"Vital component parts" means those parts of a motor vehicle that are essential to the mechanical functioning of the vehicle, including, but not limited to, the motor, drive train, and wheels.~~

**SECTION 2. AMENDMENT.** Section 23.1-15-03 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-15-03. Custody of abandoned motor vehicle.**

Units of government may take into custody and impound or request and authorize a commercial towing service to take into custody an abandoned motor vehicle. If requested by an owner, lessee, tenant, or occupant of private property, a commercial towing service may remove and take into custody an abandoned motor vehicle located on the private property.

**SECTION 3. AMENDMENT.** Section 23.1-15-04 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-15-04. Conditions under which an abandoned motor vehicle ~~may be sold immediately~~ is eligible for immediate disposal.**

~~When an~~An abandoned motor vehicle for which the value as determined by the party with custody is no more than seven model years of age, is lacking vital component parts, and does not display a license plate currently valid in North Dakota or any other state or foreign country, itone thousand dollars and for which the owner, lienholders, or secured parties cannot be identified with reasonable certainty after a search of the department of transportation records is immediately eligible for disposition and must be disposed of toby a permitted scrap iron processor licensed under section 23.1-15-09, and is not subject to the notification, reclamation, or title provisions of this chapter. Any license plate displayed on an abandoned motor vehicle must be removed and destroyed prior to the purchaser taking possession of the vehicle. An abandoned motor vehicle qualifying for immediate disposal is not eligible for reimbursement of storage costs under section 23.1-15-09.

**SECTION 4. AMENDMENT.** Section 23.1-15-05 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-15-05. Notice to owner and law enforcement of abandoned vehicle.**

1. When an abandoned motor vehicle does not fall within the provisions of section 23.1-15-04, the unit of government or commercial towing service taking it into custody shall give notice of the taking within ten days or within ten days after communications from the owner, lienholder, or identifiable secured parties of the abandoned motor vehicle have ceased. The notice must set forth the date and place of the taking, the year, make, model, and serial number of the abandoned motor vehicle, and the place where the vehicle is being held, must inform the owner and any lienholders or identifiable secured parties of their right to reclaim the vehicle under section 23.1-15-06, must state that failure of the owner, lienholders, or identifiable secured parties to exercise their right to reclaim the vehicle within thirty days is deemed a waiver by the owner, lienholders, or secured parties of all right, title, and interest in the vehicle and a consent to the disposal of the vehicle pursuant to section 23.1-15-07, and must state the end date of the thirty-day period during which the owner may reclaim the abandoned motor vehicle.
2. The notice must be sent by certified mail, return receipt requested, to the registered owner, if any, of the abandoned motor vehicle and to all readily identifiable lienholders or secured parties of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice must be published once in a newspaper of general circulation in the area where the motor vehicle was abandoned or placed on the official website for the unit of government that initiated the impound process from public property. When posted on a website, the notice must be placed in a designated area on the official website for a minimum of thirty days and must include the information in subsection 1. Published notices may be grouped together for convenience and economy. Failure of the owner, lienholders, or secured parties to exercise the right to reclaim the abandoned motor vehicle by the end of the public notice period is deemed a waiver by the owner, lienholders, or secured parties of all right, title, and interests in the vehicle and a consent to the disposal of the vehicle pursuant to section 23.1-15-07.
3. Subject to section 23.1-15-04, a commercial towing service that takes an abandoned motor vehicle into custody shall provide notice to the law enforcement agency having jurisdiction in the location from which the motor vehicle was towed within twelve hours after completing the tow.
4. Notice under subsection 3 must include:
  - a. The license plate number and state of registration;
  - b. The location from which the abandoned motor vehicle was towed;
  - c. The location to which the abandoned motor vehicle was towed;
  - d. The name, address, and telephone number of the commercial towing service that towed and is storing the abandoned motor vehicle; and
  - e. A description of the abandoned motor vehicle, including make, model, year, and color.
5. A commercial towing service that violates subsection 3 may not collect a storage fee under section 23.1-15-06 and shall return the motor vehicle to the

registered owner at no cost to the owner, lienholder, or identifiable secured party.

**SECTION 5. AMENDMENT.** Subsection 1 of section 23.1-15-07 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~An~~For any abandoned motor vehicle ~~not valued at more than seven model years of age one thousand dollars~~ taken into custody by a unit of government and not reclaimed under section 23.1-15-06 ~~must be sold to the highest bidder at public auction or sale, following reasonable published notice. The purchaser must be given a receipt in a form prescribed by the department of transportation which is sufficient title to dispose of the vehicle. The receipt also entitles the purchaser to register the vehicle and receive a certificate of title, free and clear of all liens and claims of ownership. The, the license plates displayed on an~~the abandoned motor vehicle must be removed and destroyed prior to the purchaser taking possession of the vehicleand thereafter the unit of government may:
  - a. ~~Sell the abandoned motor vehicle to the highest bidder at public auction or sale, following reasonable published notice. The purchaser must be given a receipt in a form prescribed by the department of transportation which entitles the purchaser to register the vehicle and receive a certificate of title, free and clear of all liens and claims of ownership; or~~
  - b. ~~Obtain a release from the department of transportation which is sufficient title to dispose of the vehicle by a permitted scrap iron processor.~~

**SECTION 6. AMENDMENT.** Section 23.1-15-08 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-15-08. Disposal of abandoned motor vehicles not sold.**

When no bid has been received for an abandoned motor vehicle, the unit of government or a commercial towing service that is a ~~licensed~~permitted scrap iron processor may dispose of ~~the abandoned motor vehicle~~ pursuant to ~~contract under~~ section 23.1-15-09.

**SECTION 7. AMENDMENT.** Section 23.1-15-09 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-15-09. ~~Contracts for disposal~~Disposal services - Issuance of licenses~~permits by department of environmental quality - Reimbursement of units of government and commercial towing services for costs.~~**

1. ~~The department may issue a permit to any qualified scrap iron processor desiring to provide its services under this section if the scrap iron processor meets the requirements of this chapter and chapter 23.1-08.~~
2. ~~A unit of government may contract with~~ the services of any qualified licensedpermitted scrap iron processor for collection, storage, incineration, volume reduction, transportation, or other services necessary to prepare abandoned motor vehicles, scrap tires, and ~~other~~ scrap metal for recycling or other methods of disposal. ~~The contract~~A unit of government may authorize ~~the contracting a~~ permitted scrap iron processor to pay to the owner of any abandoned motor vehicle an incentive payment for the abandoned motor vehicle if it is voluntarily surrendered and delivered to the permitted scrap iron

processor. A unit of government may authorize a permitted scrap iron processor to provide an incentive payment for scrap tires delivered to the permitted scrap iron processor. For purposes of this section, an owner of an abandoned motor vehicle includes only the person that has owned and operated the vehicle for the person's personal or business use.

- ~~2. The department may issue a license to any qualified scrap iron processor desiring to participate in a contract under this section which meets the requirements for solid waste disposers established by the department.~~
- ~~3. Before~~If ~~a unit of government enters a contract with~~uses the services of a permitted ~~scrap iron processor duly licensed by the department, the department may review the contract to determine whether it conforms to the department's plan for solid waste disposal. A contract that does conform may be approved by the department. When a contract has been approved, the department may reimburse the unit of government for the costs incurred under the contract, including incentive payments authorized and made under the contract, subject to the limitations of legislative appropriations.~~
- ~~4. Before a commercial towing service that is a scrap iron processor duly licensed by the department enters a contract with the department, the department may review the contract to determine whether it conforms to the department's plan for solid waste disposal. A contract that does conform may be approved by the department. When a contract has been approved, the~~The ~~department may reimburse the commercial towing service for the costs incurred under the contract that is a permitted scrap iron processor in an amount determined by the department for towing and, up to thirty days of storage charges resulting from taking an abandoned motor vehicle into custody, subject to the limitations of legislative appropriations, and disposal of an abandoned motor vehicle if the owner, lienholders, or secured parties of the abandoned motor vehicle cannot be identified with reasonable certainty after a search of the department of transportation records and publication as provided in subsection 2 of section 23.1-15-05.~~
- ~~5. The department may remove any submerged vehicle:~~
  - ~~a. Immediately, if the owner, lienholders, or secured parties cannot be identified. The department may use a commercial towing service that is a permitted scrap iron processor to extract, tow, and dispose of a submerged vehicle.~~
  - ~~b. Upon the owner's stated refusal to remove the submerged vehicle or after thirty days from the submerged vehicle entering the water or being discovered in the water if the owner, lienholders, or secured parties are identified after a search of the department of transportation records. The department may use a commercial towing service that is a permitted scrap iron processor for extracting, towing, and disposal of a submerged vehicle. The department may seek reimbursement from the owner for any costs related to extracting, towing, and disposal of the submerged vehicle.~~
- ~~6. The department may demand that a unit of government or a commercial towing service that is a licensed~~permitted ~~scrap iron processor contract for the disposal~~dispose ~~of abandoned motor vehicles, scrap tires, and other scrap metal under the department's plan for solid waste disposal. When~~If ~~the unit of government or the commercial towing service fails to contract~~dispose ~~of the~~

abandoned motor vehicles, scrap tires, or scrap metal within one hundred eighty days of the demand, the department, on behalf of the unit of government, may ~~contract with~~ use the services of any permitted scrap iron processor duly licensed by the department for such disposal.

7. A reimbursement request must be made on a form available from the department and is subject to the limitations of legislative appropriations and the department's discretion.

**SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 12, 2023

Filed April 13, 2023

# HIGHWAYS, BRIDGES, AND FERRIES

## CHAPTER 259

### SENATE BILL NO. 2146

(Senator Klein)  
(Representatives Nelson, Weisz)

AN ACT to create and enact a new section to chapter 24-01 of the North Dakota Century Code, relating to designating state highway 91 as North Dakota's shortest highway; and to provide a continuing appropriation.

#### 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:

**North Dakota's shortest highway - State highway 91 - Continuing appropriation.**

The department shall designate state highway 91 from the junction of United States highway 52 and state highway 91 to the junction of state highway 91 and state highway 3 as North Dakota's shortest highway and shall place signs along the highway designating that name. The department may accept any appropriate signs or funds donated to the department for the placement of signs. Any donated funds are appropriated to the department on a continuing basis for the purpose of providing signs designating state highway 91 as North Dakota's shortest highway.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 260

### HOUSE BILL NO. 1117

(Representatives Monson, K. Anderson, Bellew, Brandenburg, D. Johnson, Klemin,  
Kreidt, Martinson)  
(Senators Meyer, Myrdal)

AN ACT to create and enact a new section to chapter 24-01 of the North Dakota Century Code, relating to designating the bridge on state highway 18 as the veterans memorial bridge; and to provide a continuing appropriation.

#### 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:

#### **Veterans memorial bridge - State highway 18 - Continuing appropriation.**

The department shall designate the bridge on state highway 18 between island place and park street east in Cavalier as the veterans memorial bridge and shall place signs along the highway designating that name. The department may accept any appropriate signs or funds donated to the department for the placement of signs. Any donated funds are appropriated to the department on a continuing basis for the purpose of providing signs designating the bridge on state highway 18 as the veterans memorial bridge.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 261

### HOUSE BILL NO. 1355

(Representatives Satrom, Brandenburg, Grueneich, Klemin, J. Olson, Pyle, Tveit)  
(Senators Clemens, Dever, Paulson)

AN ACT to create and enact a new section to chapter 24-01 of the North Dakota Century Code, relating to designating the bridge on state highway 6 as the PFC. Ronald C. Goodiron Vietnam bridge; and to provide a continuing appropriation.

#### 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:

**PFC. Ronald C. Goodiron Vietnam bridge - State highway 6 - Continuing appropriation.**

The department shall designate the bridge on state highway 6 between state highway 24 and county road 134 near Breien as the PFC. Ronald C. Goodiron Vietnam bridge and shall place signs along the highway designating that name. The department may accept any appropriate signs or funds donated to the department for the placement of signs. Any donated funds are appropriated to the department on a continuing basis for the purpose of providing signs designating the bridge on state highway 6 as the PFC. Ronald C. Goodiron Vietnam bridge.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 262

### HOUSE BILL NO. 1354

(Representatives Satrom, Brandenburg, Grueneich, Kiefert, Ostlie)  
(Senators Conley, Wanzek)

AN ACT to create and enact a new section to chapter 24-01 of the North Dakota Century Code, relating to designating the overpass on United States highway 281 as the hidden wounds veterans overpass; and to provide a continuing appropriation.

#### **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:

#### **Hidden wounds veterans overpass - United States highway 281 - Continuing appropriation.**

The department shall designate the overpass on United States highway 281 between twenty-fourth street southwest and twentieth street southwest in Jamestown as the hidden wounds veterans overpass and shall place signs along the highway designating that name. The department may accept any appropriate signs or funds donated to the department for the placement of signs. Any donated funds are appropriated to the department on a continuing basis for the purpose of providing signs designating the overpass on United States highway 281 as the hidden wounds veterans overpass.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 263

### HOUSE BILL NO. 1351

(Representatives Satrom, Bosch, Dockter, Grueneich, D. Johnson, Klemin, Nathe,  
Porter)  
(Senators Hogue, Paulson)

AN ACT to create and enact a new section to chapter 24-01 of the North Dakota Century Code, relating to designating the bridge on state highway 1806 as the PVT. Albert Grass WWI bridge; and to provide a continuing appropriation.

#### 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:

**PVT. Albert Grass WWI bridge - State highway 1806 - Continuing appropriation.**

The department shall designate the southernmost bridge on state highway 1806 between county road 134 and seventy-first street in Cannonball as the PVT. Albert Grass WWI bridge and shall place signs along the highway designating that name. The department may accept any appropriate signs or funds donated to the department for the placement of signs. Any donated funds are appropriated to the department on a continuing basis for the purpose of providing signs designating the bridge on state highway 1806 as the PVT. Albert Grass WWI bridge.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 264

### HOUSE BILL NO. 1352

(Representatives Satrom, Brandenburg, Grueneich, Heinert, Klemin, Nelson, J.  
Olson, Vigesaa, Weisz)  
(Senators Conley, Klein)

AN ACT to create and enact a new section to chapter 24-01 of the North Dakota Century Code, relating to designating the bridge on state highway 30 as the Petty Officer Third Class Patrick G. Glennon Vietnam bridge; and to provide a continuing appropriation.

#### 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:

#### **Petty Officer Third Class Patrick G. Glennon Vietnam bridge - State highway 30 - Continuing appropriation.**

The department shall designate the bridge on state highway 30 between the junction of seventeenth street northeast and the junction of nineteenth street northeast as the Petty Officer Third Class Patrick G. Glennon Vietnam bridge and shall place signs along the highway designating that name. The department may accept any appropriate signs or funds donated to the department for the placement of signs. Any donated funds are appropriated to the department on a continuing basis for the purpose of providing signs designating the bridge on state highway 30 as the Petty Officer Third Class Patrick G. Glennon Vietnam bridge.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 265

### HOUSE BILL NO. 1079

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to create and enact section 24-02-02.6 of the North Dakota Century Code, relating to the department of transportation entering into reciprocal agreements with adjoining states and provinces for the inspection and testing of fabricated products or materials.

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

**SECTION 1.** Section 24-02-02.6 of the North Dakota Century Code is created and enacted as follows:

#### **24-02-02.6. Reciprocal inspection agreements for fabricated products and materials.**

The director may contract with adjoining states and provinces to request or to provide inspection and testing of fabricated products or materials needed for highway construction.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 266

### SENATE BILL NO. 2113

(Transportation Committee)  
(At the request of the Department of Transportation)

AN ACT to create and enact section 24-02-37.3 of the North Dakota Century Code, relating to the creation of a flexible transportation fund.

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

<sup>154</sup> **SECTION 1.** Section 24-02-37.3 of the North Dakota Century Code is created and enacted as follows:

#### **24-02-37.3. Flexible transportation fund.**

There is created in the state treasury the flexible transportation fund. The fund consists of eligible federal or state funding and any contributed private funds.

1. The flexible transportation fund must be administered and expended by the director and may be used for the following:
  - a. Providing a match for federal funding obtained by the department of transportation.
  - b. State-funded road and bridge construction and maintenance, and transportation support costs including staffing, facilities, and operational expenditures on the state highway system.
  - c. State-funded road and bridge construction and maintenance activities within the state but off of the state highway system. The director shall establish the terms and provisions of the program.
2. All money derived from the investment of the flexible transportation fund or any portion of the fund, must be credited to the flexible transportation fund. The director shall monthly transmit all money collected and received under this chapter to the state treasurer to be transferred and credited to the flexible transportation fund.

Approved April 4, 2023

Filed April 5, 2023

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<sup>154</sup> Section 24-02-37.3 was amended by section 10 of House Bill No. 1012, chapter 12, and section 31 of Senate Bill No. 2015, chapter 47.

## CHAPTER 267

### SENATE BILL NO. 2110

(Transportation Committee)  
(At the request of the Department of Transportation)

AN ACT to create and enact section 24-02-45.4 of the North Dakota Century Code, relating to a cooperative maintenance agreement with Theodore Roosevelt national park.

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

**SECTION 1.** Section 24-02-45.4 of the North Dakota Century Code is created and enacted as follows:

**24-02-45.4. Cooperative agreement with Theodore Roosevelt national park for the maintenance of roadways off of the state highway system.**

Notwithstanding any other provision of law, the director may enter a cooperative agreement with the Theodore Roosevelt national park for the joint maintenance of the park's transportation network, off of the state highway system, for use by the traveling public. The director may expend moneys from the state highway fund within the limits of legislative appropriations for the maintenance of roadways within the Theodore Roosevelt national park, provided the director requires the Theodore Roosevelt national park to reimburse all department costs.

Approved April 12, 2023

Filed April 13, 2023

## CHAPTER 268

### SENATE BILL NO. 2063

(Transportation Committee)  
(At the request of the Department of Transportation)

AN ACT to create and enact section 24-02-45.4 of the North Dakota Century Code, relating to reimbursable federal electric vehicle infrastructure grants; and to provide for a legislative management report.

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

**SECTION 1.** Section 24-02-45.4 of the North Dakota Century Code is created and enacted as follows:

**24-02-45.4. Reimbursable federal electric vehicle infrastructure grants - Agreements with public or private entities for the administration of federal aid programs - Report.**

1. Notwithstanding any other provision of law but subject to legislative appropriation, the director may enter agreements and may accept any federal or nonstate funds for the administration of reimbursable electric vehicle charging grant programs.
  - a. The director may enter an agreement with any person for the administration, approval, and inspection of a project to be constructed by a public or private entity, or a political subdivision.
  - b. The cost-share for any project may consist only of federal, public, political subdivision, or private funding.
  - c. A political subdivision may not have an ownership interest in an electric vehicle charging station.
  - d. Any federal formula funding for reimbursement grants must be at least ten percent of the cost-share for a project, but may not exceed eighty percent.
  - e. The director may establish criteria for the grants and determine a reasonable grant reimbursement cost-share or limit for the project in accordance with federal aid provisions.
2. In accordance with the federal formula program, the director shall establish criteria for the consideration of operation and maintenance costs of the electric charging stations in the grant award.
3. Before July 1, 2024, the department of transportation shall present a report to the legislative management regarding an update on the deployment and administration of electric vehicle charging stations.

Approved April 24, 2023

Filed April 24, 2023

## CHAPTER 269

### HOUSE BILL NO. 1102

(Transportation Committee)  
(At the request of the Department of Transportation)

AN ACT to create and enact section 24-02-51 of the North Dakota Century Code, relating to authority to acquire and administer federal transportation-related grants; and to declare an emergency.

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

**SECTION 1.** Section 24-02-51 of the North Dakota Century Code is created and enacted as follows:

##### **24-02-51. Federal transportation-related grants.**

The director is authorized and empowered to make all contracts and to do all things necessary to cooperate with the United States government in the administration of grants and other discretionary funding mechanisms administered through any appropriate federal agency which the department is otherwise eligible for. The department may accept all eligible matching funding sources, whether public or private, as authorized by the provisions of the federal agency providing the grant or funding, for the purpose of administering a program. All eligible match funding must be deposited with the state treasurer in the flexible transportation fund and be made available in accordance with the grant requirements.

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

Approved April 20, 2023

Filed April 21, 2023

## CHAPTER 270

### HOUSE BILL NO. 1127

(Representatives Roers Jones, Mock, Murphy, Pyle, Stemen)  
(Senators Sickler, Sorvaag)

AN ACT to amend and reenact subsection 1 of section 24-05-04, section 24-08-01, and subsection 2 of section 24-08-03 of the North Dakota Century Code, relating to county highways and bridges; and to repeal section 24-08-09 of the North Dakota Century Code, relating to cost limitations for a county bridge.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 24-05-04 of the North Dakota Century Code is amended and reenacted as follows:

1. If a contract for a highway improvement exceeds ~~one~~two hundred thousand dollars, the board of county commissioners shall seek bids by publishing an advertisement at least once each week for two consecutive weeks in the official newspaper of the county and in other newspapers as the board deems advisable. The first publication must be made at least fifteen days before the day set for the opening of the bids. For any contract for a highway improvement that exceeds fifty thousand dollars but does not exceed ~~one~~two hundred thousand dollars, the county, when possible, shall seek quotes from at least two contractors. If a road is destroyed by a flood or other casualty and the public interest would suffer by the delay from advertising for bids and awaiting the contract, the county commissioners may promptly contract for the rebuilding or repair of the road without advertising for bids, regardless of the cost.

**SECTION 2. AMENDMENT.** Section 24-08-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **24-08-01. Construction of bridges by board of county commissioners - Petition - Bids - Rejection.**

~~Whenever a majority of the freeholders of a civil township, or a majority of the freeholders living within a radius of three miles [4.83 kilometers] of the proposed location, petition~~ If the board of county commissioners ~~for~~ approves the construction of a bridge at a specified location within such township, or within any incorporated city, if the cost of the bridge exceeds the sum of five hundred dollars, the board of county commissioners shall view and investigate the necessity of the proposed bridge. If the board approves the petition, it, the county shall proceed to advertise by publication at least once each week, for two successive weeks, in the official newspaper of the county, for a period of thirty days, the plans and specifications of the proposed bridge, asking for sealed bids for the building of such construction of the bridge, to be submitted to ~~the board of county commissioners~~ at the next regular or special meeting of the board, at which ~~time~~ the board shall proceed to examine all proposals or bids for the building of such bridge. The first publication for bids must be made at least fifteen days before the meeting of the board to examine the proposals or bids. ~~The~~ Upon the receipt of satisfactory bids, the board shall award the contract to the lowest responsible bidder, requiring the bidder to give a bond in a sum not less than

the amount stipulated in the bid or contract, conditioned for the faithful compliance with the terms of the bid or contract, the bond to be approved by the board and filed in the office of the county auditor ~~but if no satisfactory bids are received, the board may reject all bids. If all bids are rejected, the board shall readvertise as provided herein for bids in accordance with this section. Provided, however, that if~~ if the amount of the lowest responsible bid is less than fifteen thousand dollars, the board may refuse all bids received and proceed to construct the bridge under its own supervision as it deems most expedient and may enter into contracts for the labor or material to be used in the construction of the bridge.

**SECTION 3. AMENDMENT.** Subsection 2 of section 24-08-03 of the North Dakota Century Code is amended and reenacted as follows:

2. If the cost of rebuilding or repairing a bridge would exceed ~~thirtytwo hundred~~ thirtytwo hundred thousand dollars on estimate of the county engineer and upon the approval of the estimate by the department, the county commissioners shall advertise for bids and award the contract pursuant to section 24-08-01. For any contract for a bridge improvement that exceeds fifty thousand dollars but does not exceed two hundred thousand dollars, the county, when possible, shall seek quotes from at least two contractors. If a bridge is destroyed by a flood, fire, or other casualty and the public interest would suffer by the delay from advertising for bids and awaiting the contract pursuant to section 24-08-01, the county commissioners may promptly contract for the rebuilding or repair of the bridge without advertising for bids, regardless of the cost.

**SECTION 4. REPEAL.** Section 24-08-09 of the North Dakota Century Code is repealed.

Approved March 14, 2023

Filed March 15, 2023



# MENTAL AND PHYSICAL ILLNESS OR DISABILITY

## CHAPTER 271

### SENATE BILL NO. 2052

(Human Services Committee)

(At the request of the Department of Health and Human Services)

AN ACT to amend and reenact sections 25-01-03, 25-04-00.1, 25-04-01, 25-04-02, 25-04-02.1, 25-04-04, 25-04-04.1, 25-04-05, 25-04-05.1, 25-04-06, 25-04-08, 25-04-08.1, 25-04-11, 25-04-11.1, 25-04-11.2, 25-04-14, 25-04-15, 25-04-16, 25-04-17, and 25-04-19, and subsection 3 of section 54-44.3-20 of the North Dakota Century Code, relating to the operation of the life skills and transition center and life skills and transition center's superintendent's employment, roles, and duties.

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

**SECTION 1. AMENDMENT.** Section 25-01-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **25-01-03. Supervising officer to appoint superintendent of institutions - Salaries - Removal.**

1. The supervising officer shall appoint a superintendent for each of the institutions under its control, except for the state hospital, where the supervising officer shall appoint a superintendent in consultation with a state hospital governing body.
2. The tenure of office of each superintendent is two years from the date of the superintendent's appointment, and the superintendent must possess qualifications required by this title. Any superintendent may be removed by the supervising officer for misconduct, neglect of duty, incompetency, or other proper cause showing the superintendent's inability or refusal properly to perform the duties of office. A removal at a time other than a termination of the superintendent's two-year tenure may be had only after an opportunity is given to the person to be heard before a board consisting of the governor, attorney general, and supervising officer of the institution on preferred written charges. A removal when made, however, is final. This subsection does not apply to the superintendent of the life skills and transition center, the superintendent of North Dakota vision services - school for the blind, or the superintendent of the school for the deaf, whose positions are included in the classified service as provided in section 54-44.3-20.
3. The supervising officer shall fix the compensation of each superintendent within the limits prescribed in this title and within the appropriations made by the legislative assembly for compensation.

**SECTION 2. AMENDMENT.** Section 25-04-00.1 of the North Dakota Century Code is amended and reenacted as follows:

**25-04-00.1. Definitions.**

For the purposes of this chapter:

1. "Department" means the department of health and human services.
2. "Eligible" means an individual has been deemed eligible by the department for developmental disability services.
3. "Individual served" is an individual who is a legal resident of the state of North Dakota and is receiving services from the life skills and transition center.
4. "Nonresident patient at the life skills and transition center individual served" includes:
  - a. Any patient at individual served by the life skills and transition center who is under eighteen years old and whose responsible relative is not a bona fide resident of this state.
  - b. Any Indian patient enrolled member of a federally recognized Indian tribe for whom the United States government has, through its statutes and regulations, a responsibility for their care.
- 2.5. "Nonresident responsible relative" includes the patient's nonresident spouse, father, or mother of the individual served. It includes the bureau of Indian affairs in those cases involving an enrolled member of a federally recognized Indian patient tribe for whom the United States government has, through its statutes and regulations, a responsibility for their care.
6. "Nonresidential services" means rehabilitative services and supports that are provided in a family home or community setting.
7. "Residential services" are specialized services and supports provided at the life skills and transition center facility which include both room and board and rehabilitative services in accordance with an individual's care and support plan. Residential services provided at the life skills and transition center are available to address an individual's needs for stabilization.

**SECTION 3. AMENDMENT.** Section 25-04-01 of the North Dakota Century Code is amended and reenacted as follows:

**25-04-01. Life skills and transition center - Name - Administration and control.**

A facility for individuals with developmental disabilities must be maintained at or near the city of Grafton in Walsh County. ~~The facility must also be available for an individual who is determined to be an individual who may benefit from the facility's services.~~ The facility must be known and designated as the life skills and transition center. The department of health and human services has administrative authority and control of the life skills and transition center.

**SECTION 4. AMENDMENT.** Section 25-04-02 of the North Dakota Century Code is amended and reenacted as follows:

## **25-04-02. Purpose of life skills and transition center.**

1. The purpose of the life skills and transition center is to serve as a specialty care and support resource for eligible individuals with developmental disabilities who are experiencing crisis or who would benefit from stabilization, and to work together with parent, guardian, or legal custodian and care teams to identify opportunities for each individual served to live in a family home or community setting of their choice when possible.
2. The life skills and transition center must be maintained for the relief, instruction, care, and custody of to provide care, treatment, training, rehabilitation, and supervision for eligible individuals with developmental disabilities or other individuals who may benefit from the services offered at the center. For this purpose the department of health and human services may introduce and establish such trades and manual industries rehabilitative and support services as, in its judgment, will best prepare the residents for future self-support individuals served to live in the most integrated, independent setting possible.
- 2-3. The department life skills and transition center may provide onsite and offsite additional both residential services and nonresidential services and effectuate its powers and duties to best serve eligible individuals with developmental disabilities and other individuals who may benefit from those activities. The services provided and the duties effectuated need not be accredited by the accreditation council on services for people with developmental disabilities or certified by the health care financing administration, or any other similar accrediting or certifying organization, if the service or duty is not provided to individuals with developmental disabilities or if such accrediting or certifying organization does not accredit or certify the service or duty.

**SECTION 5. AMENDMENT.** Section 25-04-02.1 of the North Dakota Century Code is amended and reenacted as follows:

### **25-04-02.1. Accreditation of life skills and transition center.**

The department of health and human services shall may request appropriations and resources sufficient to ensure allow for maintenance of the life skills and transition center's accreditation by the accreditation council on services for people with developmental disabilities and/or certification by the health care financing administration and centers for Medicare and Medicaid services or, if deemed necessary, by similar accrediting and certifying organizations and agencies possessing standards applicable to an individual with a developmental disability and disciplines needed to provide quality services to individuals served.

**SECTION 6. AMENDMENT.** Section 25-04-04 of the North Dakota Century Code is amended and reenacted as follows:

### **25-04-04. Who may receive benefits of life skills and transition center.**

1. Subject to this chapter and to any rules adopted by the department of health and human services, the benefits of the life skills and transition center may be received only by:
  4. a. Individuals with developmental disabilities and other Eligible individuals who may benefit from services provided at by the life skills and transition center who, in the opinion of the superintendent of the life skills and

transition center are of suitable age and capacity to receive instruction in the care, treatment, training, rehabilitation, or supervision by the life skills and transition center and/or whose deficiencies/disabilities prevent them from receiving proper training and instruction in the public schools;

2. ~~b.~~ Eligible individuals who, in the opinion of the superintendent of the life skills and transition center, may benefit from services provided at by the life skills and transition center and who are in need of stabilization supports and cannot be properly cared for in their homes/family home or other available facilities/community settings; or
  3. ~~c.~~ Eligible individuals who, in the opinion of the superintendent of the life skills and transition center, may benefit from onsite and offsite/either residential services or nonresidential services provided or duties effectuated by the life skills and transition center.
2. Residents and nonresidents of this state may receive the benefits of services from the life skills and transition center. Priority, however, must be given to residents of this state and first priority must be given to individuals with developmental disabilities.

**SECTION 7. AMENDMENT.** Section 25-04-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**25-04-04.1. Program management for a resident an individual served.**

The department shall ensure active program management is maintained for eligible individuals residing/receiving residential services at the life skills and transition center.

**SECTION 8. 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 – Screening required prior to admission or readmission accessing services provided by life skills and transition center - Educational or related services without charge for persons/individuals twenty-one years of age and under.**

1. The superintendent may admit a person an eligible individual to the life skills and transition center when all for residential services based on consideration of the following conditions have been met/factors:
  - 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 health and human services/Ability of the life skills and transition center to provide the appropriate level of care based on the individual's need.
  - 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 health and human services may require, indicates to the superintendent's satisfaction that the person is eligible for admission

- ~~to~~Health and safety considerations for both the individual served and other individuals currently being served by the life skills and transition center.
- ~~c.~~ The ~~person~~individual may be admitted without exceeding the resident capacity of the facility as specified in the professional standards adopted ~~by~~of the department of health and human services.
  2. ~~No person may be admitted or readmitted to the life skills and transition center unless that person has undergone a screening process at the life skills and transition center to determine whether the admission or readmission is appropriate. Length of stay criteria may be established under rules as the department of health and human services may adopt. 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 at the life skills and transition center. If in the opinion of the superintendent the person screened under this subsection is a proper subject for institutional care, treatment, and training at the life skills and transition center, that person may remain as a voluntary resident at the center at the discretion of the superintendent if all other conditions for admission required by this section are met.~~The superintendent may approve an eligible individual for nonresidential services provided by the life skills and transition center if all of the following conditions have been met:
    - a. ~~Application has been made on behalf of the individual by a department developmental disabilities program manager, a parent, guardian, or legal custodian, in accordance with procedures established by the department.~~
    - b. ~~Information has been submitted to the life skills and transition center which allows the superintendent to determine that the individual served would benefit from nonresidential stabilization services offered by the life skills and transition center for the purpose of avoiding institutionalization or further destabilization of the individual's living situation.~~
  3. ~~Notwithstanding any other provision of this chapter, no handicapped patient~~eligible individual served, twenty-one years of age or under, or the estate or the parent of such ~~patient~~individual, may be charged for educational or related services provided at the life skills and transition center. Except as provided in subsection 4, the department of health and human services has prior claim on all benefits accruing to such ~~patients~~individuals served 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~~an individual with a developmental disability to benefit from special education. The cost of related services other than medical and medically related services must be paid by the life skills and transition center, the school district of residence of the ~~handicapped child~~ with a developmental disability, and other appropriate state agencies and political subdivisions of this state. The department of public instruction, the department of health and 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 an eligible individual ~~with a developmental disability~~, who is 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 children with disabilities. 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 life skills and transition center pays or waives the out-of-pocket expense.

**SECTION 9. AMENDMENT.** Section 25-04-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**25-04-05.1. Transfer of residents individuals - Visiting privileges - Release and placement of patients individuals served.**

1. The superintendent shall have the right of temporary transfer of any resident ~~of individual served~~ at the life skills and transition center to an appropriate hospital or other specialized facility when in the superintendent's opinion the immediate health and safety of the resident ~~individual or the immediate health and safety of others~~ requires the transfer. ~~The superintendent shall also have the right and responsibility of indefinite transfer of a resident from one state facility for individuals with developmental disabilities to another when the best interest of the resident will be served thereby, or when the transfer is required in conformity with the policies of the department of health and human services; provided, however, that no transfer may be effected until all reasonable efforts have been made to consult with the resident's parent or guardian of the person.~~
2. Subject to reasonable rules for the orderly operation of the life skills and transition center ~~or other state facility for individuals with developmental disabilities~~, any parent ~~or guardian, or legal custodian~~ of the person ~~of a resident individual served~~ shall have the right of visiting and communicating with a ~~child or ward~~ the individual served and authorizing visits and communications with others.
3. The superintendent may authorize the temporary ~~release~~ discharge of any resident ~~individual served~~ to the custody of the resident's ~~individual served's~~ parent ~~or guardian, or legal custodian~~ of the person ~~individual~~, or to another person designated by the parent ~~or such guardian, or legal custodian~~. In the absence of such authorization, any parent ~~or guardian, or legal custodian~~ of the person ~~of any resident individual served~~ may formally request, in writing, the resident's ~~individual served's~~ temporary ~~release~~ discharge. The ~~release~~ discharge must be granted at the earliest reasonable opportunity, but not more than thirty days after receipt of a written application. If a

~~releasedischarge~~ is, or would be, effected contrary to the advice of the superintendent based on a recent comprehensive evaluation of the individual, the superintendent shall so advise the parent ~~or such~~, guardian, or legal custodian in writing.

4. The superintendent may arrange for the suitable placement of ~~a residentan~~ individual served outside the life skills and transition center ~~or other state facility~~ and to ~~releasedischarge~~ the ~~resident on placement~~individual, provided placement has been preceded by a comprehensive evaluation. No such placement may be effected until all reasonable efforts have been made to consult with the ~~resident's~~individual served's care team and parent or guardian, or legal custodian of the ~~person~~individual served.

**SECTION 10. AMENDMENT.** Section 25-04-06 of the North Dakota Century Code is amended and reenacted as follows:

**25-04-06. Juvenile court ~~commitmentorder~~ for assessment of dependent, neglected, or delinquent ~~mentally deficient~~ -- ~~Commitment for observation~~child with developmental disability - Appeal.**

1. In any proceeding instituted in juvenile court, the court may make an order ~~committingfor assessment of~~ the child ~~to by~~ the life skills and transition center ~~for developmental disability determination~~ whenever it appears to the satisfaction of the court that the child involved in the proceeding is:
  1. ~~a.~~ a. Dependent and ~~a candidate~~eligible for services at the life skills and transition center;
  2. ~~b.~~ b. Neglected and ~~a candidate~~eligible for services at the life skills and transition center; or
  3. ~~c.~~ c. Delinquent and ~~a candidate~~eligible for services at the life skills and transition center.

~~If the court is in doubt as to whether the child is a candidate for services offered at the life skills and transition center, the court may make an order committing the child to the life skills and transition center for observation only by the authorities of such institution.~~

2. If it is ascertained as a result of such ~~observationassessment~~ assessment that the child is ~~a candidate~~eligible for residential services offered at the life skills and transition center and the child qualifies for accessing services from the life skills and transition center in accordance with section 25-04-04 and subsection 1 of section 25-04-05, a report to such effect must be made by the authorities of the life skills and transition center to the court. The court thereupon shall make an order fixing a time for a hearing upon the report showing the child to be ~~in need of these services~~eligible and qualifying for accessing services offered at the life skills and transition center. Notice of the hearing must be given to the parents, custodian, or guardian of such child in the manner prescribed by law for the giving of notice in other proceedings in juvenile court. Upon such hearing, the court shall make such order as it may deem proper. Any parent, custodian, guardian, or other person charged with the control of such child may take an appeal from the order made by the court in the manner now prescribed by law for the taking of appeals from decisions of the juvenile court. ~~The procedure provided in this section is not exclusive but is in addition to other procedures provided in this chapter for the~~

~~commitment of children~~ Admission to residential services at the life skills and transition center must follow the procedures established by the department and in accordance with section 25-04-04 and subsection 1 of section 25-04-05. Any orders for assessment may be accomplished without admission for residential services or transportation to the life skills and transition center.

**SECTION 11. AMENDMENT.** Section 25-04-08 of the North Dakota Century Code is amended and reenacted as follows:

**25-04-08. Discharge of resident individual served from institution life skills and transition center.**

~~A person~~ An individual who has been admitted as a resident receives residential services at the life skills and transition center must be permanently discharged within thirty days ~~under~~ if any one of the following conditions are present:

1. The superintendent, on the basis of a comprehensive evaluation and in consultation with the individual's parent, guardian, legal custodian, or care team, finds that the care, treatment, training, rehabilitation, and supervision offered by the state life skills and transition center are no longer required ~~needed~~.
2. The parent ~~or~~ guardian, or legal custodian who voluntarily ~~committed~~ admitted the parent's child or the guardian's ward as a resident individual to residential services at the life skills and transition center and who retains legal custody makes a written request for discharge.
3. The ~~person~~ individual is admitted on indefinite transfer to a hospital, school, or other facility, or a protective service under the jurisdiction of another state, or another agency or department of this state; ~~provided, however, that if such admission be by contractual arrangement made by the department of health and human services, the person must be placed on nonresident release status, but not discharged.~~
4. A court of competent jurisdiction orders the discharge of the ~~person~~ individual.

~~Any person who is to be discharged under subsection 2 or 4 shall first receive a comprehensive evaluation unless such evaluation is not completed within thirty days of the request for discharge.~~

<sup>155</sup> **SECTION 12. AMENDMENT.** Section 25-04-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**25-04-08.1. Notification before discharge.**

Before discharge the superintendent shall ~~consult~~ meet with the parent ~~or~~ guardian, legal custodian, or care team of the ~~person~~ individual served to be discharged, or with the court that ordered the ~~commitment~~, and ~~shall notify the director of the county social service board or human service zone of the county in which it is proposed that such person will assume residence and also shall notify the executive director of the department of health and human services~~ individual served to receive services at the life skills and transition center pursuant to section 25-04-06.

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<sup>155</sup> Section 25-04-08.1 was also amended by section 75 of House Bill No. 1165, chapter 229.

**SECTION 13. AMENDMENT.** Section 25-04-11 of the North Dakota Century Code is amended and reenacted as follows:

**25-04-11. Disposition of personindividual who is not a legal resident.**

If a personan individual who has no legal residence in this state is subject to admission to the life skills and transition center or ~~other appropriate state facility~~, by order of a court of ~~competent jurisdiction~~ pursuant to section 25-04-06, such personindividual must be ~~sent~~ admitted, at the expense of the county or ~~human service zone~~, to the life skills and transition center in the same manner as a resident of this state who is found to be in need of services offered at the life skills and transition center, and the superintendent of the life skills and transition center shall then arrange for the transportation of such personindividual to the place where the personindividual belongs. The department of ~~health and human services~~ shall ascertain the place where such personindividual belongs when the same conveniently can be done.

**SECTION 14. AMENDMENT.** Section 25-04-11.1 of the North Dakota Century Code is amended and reenacted as follows:

**25-04-11.1. Disposition Admission and disposition of nonresidents - Exceptions-- Reciprocal agreements.**

If a personan individual who has no legal residence in this state or whose residence is unknown is found to be a personan eligible individual requiring care and treatment in, training, rehabilitation, or supervision from the life skills and transition center, the personindividual to be served must be ~~sent~~ admitted to the life skills and transition center in the same manner, and accompanied by the same documents, as in the case of a resident of this state. The ~~supervising~~ department shall immediately inquire as to the residence of the personindividual or the person'sindividual's responsible relatives, and, if the residence is found to be in another state or country, the ~~supervising~~ department shall arrange for transportation of the personindividual to the place of legal residence or legal settlement unless the personindividual can be accommodated at the life skills and transition center without depriving a North Dakota resident of care and treatment at the life skills and transition center and adequate costs of care are paid for within a reasonable time, or unless a reciprocal agreement has been entered into with another state regarding the care and commitment of the nonresident. The ~~supervising~~ department may enter into reciprocal agreements with other states regarding the mutual exchange, return, and transportation of personsindividuals who are within one state but have legal residence or legal settlement in another state. The agreements may not contain any provision conflicting with any law of this state.

**SECTION 15. AMENDMENT.** Section 25-04-11.2 of the North Dakota Century Code is amended and reenacted as follows:

**25-04-11.2. Liability for care and treatment of nonresident patientsindividuals served.**

Nonresident patientsatindividuals served by the life skills and transition center and nonresident responsible relatives of patientsindividuals served are liable for the chargeable costs of care and treatment at the life skills and transition center.

**SECTION 16. AMENDMENT.** Section 25-04-14 of the North Dakota Century Code is amended and reenacted as follows:

**25-04-14. Expenses chargeable against patient/individual or patient's/individual's estate - Filing claims.**

Expenses for care and treatment of each patient/individual served by the life skills and transition center must, if practicable, be in accordance with the cost of providing care and treatment for the different degrees or conditions of mental and physical health and charges may be adjusted in accordance with the patient's/individual served's ability to pay which must include an estimate of potential future receipts, including amounts from estates. The supervising department shall recover from the patient/individual served or from a discharged patient/individual expenses chargeable for care and treatment. If any patient/individual served is receiving social security benefits or is a veteran or a dependent of a veteran who has received, is receiving, or is entitled to receive compensation or pension from the veterans' administration, the expenses are a current claim against the patient/individual served and may be recovered monthly by the supervising department except that any amount required by the payer of the benefits to be paid directly to the patient/individual served must, upon approval of the department of health and human services, be credited to the patient's/individual served's personal account from any money thus received.

**SECTION 17. AMENDMENT.** Section 25-04-15 of the North Dakota Century Code is amended and reenacted as follows:

**25-04-15. Expenses chargeable against guardianship estate of patient/individual served - Restrictions.**

The expenses chargeable by the state for the care and treatment of any patient/individual served over twenty-one years of age at the life skills and transition center must be charged against the guardianship estate of such patient/individual, if the patient/individual has such an estate, subject to the following restrictions:

1. No part of the estate may be taken for such purpose if the patient/individual has dependents within the United States dependent upon the estate for support and the taking of all or a portion of the estate would result in undue hardship to those dependents.
2. No real property belonging to the estate may be sold during the lifetime of the patient/individual served except for the maintenance and support of the patient's/individual served's dependents, unless it is shown that the sale of the property will not result in undue hardship to those dependents, and it may be sold only upon the order of the district court having jurisdiction of the estate, with the consent of the department of health and human services.
3. No personal property belonging to the estate may be sold within five years from the date upon which the patient/individual was sent to the life skills and transition center unless the property is ordered sold by the district court having jurisdiction of the estate for the reason that the property is likely to deteriorate in value during the time herein specified.
4. No claim may be made to recover from the estate of a former resident/individual served of the life skills and transition center who has left the life skills and transition center and married and leaves a spouse or issue dependent upon such estate.

**SECTION 18. AMENDMENT.** Section 25-04-16 of the North Dakota Century Code is amended and reenacted as follows:

**25-04-16. Waiver of payment - Use of income tax data - Confidentiality - Definition.**

1. Except with respect to services provided and duties effectuated for persons other than residents of individuals served by the life skills and transition center who are developmentally disabled, and except with respect to services provided and duties effectuated under subsection 2 of section 25-04-02, the resident individual served, former resident individual served, parent of a resident individual served or former resident individual served under age eighteen, personal representative, or guardian may make application to the supervising department to pay less than the costs or none of the costs incurred by the state for the resident individual served's care and treatment at the life skills and transition center. An application from a resident individual served, former resident individual, personal representative, or guardian must be accompanied by proof of the resident individual served's or the estate of the resident individual served's inability to pay. An application from a parent of a resident individual served or former resident individual served must be accompanied by proof that the parent has applied for or cooperated fully in an application 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 provision of services to the resident individual served, and has assured the contribution of those services, compensation, and contract and program benefits to meet the cost of care provided to the resident individual served by the life skills and transition center. A waiver must be granted upon receipt of an application from such a parent, which is complete and supported by the required proofs and is effective for so long as the parent continues to apply for or cooperate fully in applications for services, compensation, and contract and program benefits, and continues to assure the contribution of those services, compensation, and benefits to meet the costs of care. A waiver, once granted with respect to a resident individual served under age eighteen, extinguishes any debt that would otherwise be owed by the resident individual served, the resident individual served's parents, or the resident individual served's estate with respect to care and treatment furnished during times the waiver is effective.
2. Upon receipt of such application, the supervising department shall direct the human service zone of the county from which the patient individual served was admitted to determine whether the application is complete and supported by the required proofs. The supervising department shall approve, reject, or amend the determination made by the human service zone. The determination made by the supervising department may be appealed to the district court of the county of residence of the patient individual served.
3. Any patient individual served, former patient individual served, parent of a patient individual served or former patient individual served, guardian, or personal representative who seeks relief from the payment of the cost of care and treatment by filing an application for relief of payment shall do so with the understanding that the supervising department may, in its discretion, and to its satisfaction, verify any statement made in such application for relief of payment by a request for information from financial institutions, including commercial banks, and from other sources likely to possess verifying information. Notwithstanding the provisions of section 57-38-57, this verification may include a review of such applicant's state income tax return or

any other document or report submitted to or held by any office or department of the state of North Dakota or any of its political subdivisions.

4. When any official or employee of the life skills and transition center who, pursuant to subsection 1, obtains income tax information or other tax information from the state tax commissioner the confidentiality of which is protected by law, such official or employee may not divulge such information except to the extent necessary for the administration of this chapter or when otherwise directed by judicial order or when otherwise provided by law.
5. ~~As used in this chapter, "supervising department" means the department of health and human services.~~

**SECTION 19. AMENDMENT.** Section 25-04-17 of the North Dakota Century Code is amended and reenacted as follows:

**25-04-17. Reduction or writeoff of accounts - Report to legislative audit and fiscal review committee.**

The supervising department may authorize the reduction or writeoff of a ~~patient's~~ an individual served's past-due account from the life skills and transition center's financial records upon determining that the account is not collectible. The ~~supervising~~ department, by September first after the close of each fiscal year, shall present a detailed report to the legislative audit and fiscal review committee on the status of accounts receivable for that fiscal year. The report must include:

1. An aging by ~~patient~~individual classification of accounts remaining unpaid.
2. The amounts by ~~patient~~individual classification by which accounts were reduced or written off for reasons other than payment during that fiscal year.

**SECTION 20. AMENDMENT.** Section 25-04-19 of the North Dakota Century Code is amended and reenacted as follows:

**25-04-19. Quality assurance review committees - Reports - Immunity.**

Any information, data, report, or record generated by or made available to an internal quality assurance review committee of the life skills and transition center or members thereof is confidential and may be used by the committee and the members thereof only in the exercise of the proper functions of the committee. The proceedings and records of the committee and the members thereof are not subject to subpoena or discovery or introduction into evidence in any civil action arising out of any matter under consideration by the committee. Any information, document, or record otherwise available from original sources is not immune from discovery or use in any civil action merely because it was presented during the proceedings of the committee, nor may any person who testified before the committee or who is a member of it be prevented from testifying as to matters within that person's knowledge, but a witness cannot be asked about that witness's testimony before the committee. This section does not relieve any person of any liability incurred as a result of furnishing health care to the resident. No person furnishing information, data, reports, or records to the committee with respect to any resident of the life skills and transition center is, by reason of furnishing the information, data, reports, or records, liable in damages to any resident, or answerable for willful violation of a privileged or confidential communication. No member of the committee is liable in damages to any person for any action taken or recommendation made within the scope of the functions of the

committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the member.

<sup>156</sup> **SECTION 21. AMENDMENT.** Subsection 3 of section 54-44.3-20 of the North Dakota Century Code is amended and reenacted as follows:

3. Administrative heads of departments required by law, other than the superintendent of the life skills and transition center, superintendent of North Dakota vision services - school for the blind, the superintendent of the school for the deaf, and the state librarian.

Approved April 4, 2023

Filed April 5, 2023

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<sup>156</sup> Section 54-44.3-20 was also amended by section 3 of Senate Bill No. 2022, chapter 54.

## CHAPTER 272

### SENATE BILL NO. 2083

(State and Local Government Committee)  
(At the request of the Department of Health and Human Services)

AN ACT to create and enact a new section to chapter 25-02 of the North Dakota Century Code, relating to collaborative care and consultation services provided by the state hospital; to amend and reenact sections 25-02-03, 50-06-05.2, 50-06-05.3, and 50-06-06.5 of the North Dakota Century Code, relating to the object of the state hospital and the operation of regional human service centers; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 25-02-03 of the North Dakota Century Code is amended and reenacted as follows:

##### **25-02-03. Object of state hospital.**

The state hospital is an institution for mental diseases serving specialized populations of ~~the mentally ill individuals with severe mental illness, including persons suffering from drug addiction or alcoholism~~ individuals with a substance use disorder. The state hospital is one component of the North Dakota mental health delivery system and serves as a resource to community-based treatment programs. The state hospital shall, pursuant to rules adopted by the department of health and human services, receive and care for all ~~mentally ill persons~~ eligible individuals with severe mental illness, including ~~persons suffering from drug addiction or alcoholism~~ individuals with a substance use disorder, residing within this state in accordance with this title, and ~~shall~~ may furnish to those ~~mentally ill persons~~ individuals all needed food, shelter, treatment, and support that ~~may tend to restore their mental health or to alleviate their illness or suffering.~~

**SECTION 2.** A new section to chapter 25-02 of the North Dakota Century Code is created and enacted as follows:

##### **Collaborative care - Consultation services.**

The state hospital may provide behavioral health collaborative care and consultation services, including psychiatric consultation, with private providers and correctional facility providers.

**SECTION 3. AMENDMENT.** Section 50-06-05.2 of the North Dakota Century Code is amended and reenacted as follows:

##### **50-06-05.2. Regional human service centers - Licensure.**

Human services must be delivered through regional human service centers in the areas designated by the governor's executive order 1978-12 dated October 5, 1978. The department shall request appropriations and resources sufficient for accreditation and to ensure maintenance of the accreditation for the regional human service centers, including associated facilities, by the council on accreditation or by a similar national accrediting body accepted by the department. The regional human service

centers are subject to licensing by the department. The department may use the accreditation as a basis for licensing in lieu of adopted rules for the operation of the regional human service centers. The department shall adopt rules for the operation of the regional human service centers. A regional human service center may not operate without a license issued in accordance with this section. Regional human service centers are authorized to receive federal and other funds available to finance, in whole or in part, the services and operations of the centers.

<sup>157</sup> **SECTION 4. AMENDMENT.** Section 50-06-05.3 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-05.3. Regional human service centers - Powers - Duties - Human service advisory groups.**

1. Regional human service centers shall provide human services to all eligible individuals and families to help individuals and families achieve or maintain social, emotional, and economic self-sufficiency by providing human services to:
  - a. Prevent, reduce, or eliminate dependency;
  - b. ~~Prevent or remedy the neglect, abuse, or exploitation of children and of adults unable to protect their own interests;~~
  - c. ~~Aid in the preservation, rehabilitation, and reuniting of families;~~
  - d. Prevent or reduce inappropriate institutional care by providing for care while institutionalized or providing for community-based or other forms of less restrictive care;
  - e-c. Secure referral or admission for institutional care;
  - f-d. Provide outpatient diagnostic and treatment services; and
  - g. ~~Provide information concerning guardianship to people interested in becoming or who are guardians; and~~
  - h-e. Provide rehabilitation and crisis services for patients with mental, emotional, or substance use disorders, an intellectual disability, and other psychiatric conditions, particularly for those patients who have received prior treatment in an inpatient facility.
2. Regional human service centers shall deliver services in the manner prescribed by the department.
3. Regional human service centers may provide behavioral health collaborative care and consultation services, including psychiatric consultation, with private providers and correctional facility providers.
4. Each regional human service center must have a human services advisory group consisting of the human service zone directors of the region served, the public health directors of the region served, two current county commissioners appointed by the executive director of the department, and five additional

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<sup>157</sup> Section 50-06-05.3 was also amended by section 112 of House Bill No. 1165, chapter 229.

members appointed by the executive director of the department. Each advisory group member must be a resident of the region the member is appointed to serve. The term of office for each appointed member is two years and arranged so that the term of three of the appointed members expires at the end of the first year and the term of the remaining four appointed members expires at the end of the second year, except for those first members appointed, three members shall serve a one-year term and four members shall serve a two-year term. The director shall select the appointed members of each human service advisory group on the basis of population of the counties in the region served by the regional human service center. Each county in the region must be represented by at least one member on the human service advisory group. To the extent possible, appointed membership of the advisory group must reflect regional interests in the fields of developmental disabilities, social services, mental health, and substance use disorders. The executive director of the department shall appoint a chairman for each advisory group from the membership of the advisory group. The executive director of the department shall fill a vacancy occurring within an advisory group for other than the expiration of a term in the same manner as original appointments, except that appointments must be made only for the unexpired term. The department shall compensate appointed members of a human service advisory group at the rate of forty-five dollars per day, not to exceed twenty-five days in any one year. The department also shall pay members for mileage and actual expenses incurred in attending meetings and in the performance of their official duties in the amounts provided by law for other state officers.

**SECTION 5. AMENDMENT.** Section 50-06-06.5 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-06.5. Continuum of services for individuals with serious and persistent mental illness.**

1. The department shall develop a plan for an integrated, multidisciplinary continuum of services for individuals with serious and persistent mental illness. The continuum may consist of an array of services provided by private mental health professionals, private agencies, human service zones, regional human service centers, community-based residential care and treatment facilities, and private and public inpatient psychiatric hospitals. When appropriate, access to the continuum must be through regional human service centers. Within the limits of legislative appropriations, the plan for a continuum may include:
  - a. Programs, and appropriate related facilities, to provide socialization skills.
  - b. Programs, and appropriate related facilities, to provide basic living skills.
  - c. Appropriate residential facilities and other housing options.
  - d. Appropriate training, placement, and support to enhance potential for employment.
  - e. Appropriate delivery and control of necessary medication.
  - f. Appropriate economic assistance.

- g. An inpatient facility with appropriate programs to respond to persons who require hospitalization.
  - h. Peer and recovery support.
  - i. Crisis service that is available twenty-four hours a day seven days a week.
2. The continuum of care must provide that a person requiring treatment be submitted to the least restrictive available conditions necessary to achieve the purposes of treatment. The department shall ensure appropriate cooperation with human service zones and private providers in achieving the continuum of care.

**SECTION 6. EMERGENCY.** Sections 2 and 4 of this Act are declared to be an emergency measure.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 273

### HOUSE BILL NO. 1043

(Human Services Committee)

(At the request of the Department of Health and Human Services)

AN ACT to amend and reenact sections 25-03.2-01, 25-03.2-03, and 25-03.2-06 of the North Dakota Century Code, relating to licensure of a psychiatric residential treatment facility for children and admission criteria.

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

**SECTION 1. AMENDMENT.** Section 25-03.2-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **25-03.2-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Child" or "children" means a person or persons under the age of twenty-one.
2. "Clinical supervision" means the oversight responsibility for individual treatment plans and individual service delivery.
3. "Department" means the department of health and human services.
4. "Diagnostic assessment" means a written summary of the history, diagnosis, and individual treatment needs of a mentally ill person using diagnostic, interview, and other relevant assessment techniques.
5. "Individual treatment plan" means a written plan of intervention, treatment, and services for a mentally ill person that is developed under the clinical supervision of a mental health professional on the basis of a diagnostic assessment.
6. "Mentally ill person" has the same meaning provided for in section 25-03.1-02.
7. "Psychiatric residential treatment facility for children" means a facility or a distinct part of a facility that provides to children a total, twenty-four hour, therapeutic environment integrating group living, educational services, and a clinical program based upon a comprehensive, interdisciplinary clinical assessment, and an individualized treatment plan that meets the needs of the child and family. The services are available to children in need of and able to respond to active psychotherapeutic intervention and who cannot be effectively treated in their own family, in another home, or in a less restrictive setting. The facility must meet the requirements of a psychiatric residential treatment facility as set out in title 42, Code of Federal Regulations, part 483.352.
8. "Residential treatment" means a twenty-four hour a day program under the clinical supervision of a mental health professional, in a community residential

setting other than an acute care hospital, for the active treatment of mentally ill persons.

9. "Serious risk of harm" means a substantial likelihood of:
- a. Suicide, as manifested by current suicidal threats, attempts, or significant depression creating immediate risk of suicide;
  - b. Killing or inflicting serious bodily harm to self or another person, as manifested by current act; or
  - c. Substantial deterioration in physical health or substantial injury, disease, or death based on current poor self-control or judgment.

<sup>158</sup> **SECTION 2. AMENDMENT.** Section 25-03.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.2-03. Requirements for license.**

The department shall issue a license for the operation of a psychiatric residential treatment facility for children upon a showing that:

1. The premises to be used are in fit, safe, and sanitary condition and properly equipped to provide good care and treatment;
2. The program director of the facility holds, at a minimum, a ~~master's~~bachelor's degree in social work, psychology, or in a related field with ~~at least two years of professional experience in the treatment of~~working with children suffering from mental illnesses or emotional disturbances. The executive director of the facility must have, at a minimum, a bachelor's degree in a behavioral science or a bachelor's degree in any field and two years of experience in administration;
3. The staff employed by the facility is supervised by the program director and qualified by training and experience to provide services to children suffering from mental illnesses or emotional disturbances. The facility annually must provide training to staff which is relevant to the needs of the client population;
4. The health, safety, and well-being of the children cared for and treated in the facility will be properly safeguarded;
5. There are sufficient treatment, educational, recreational and leisure, and physical facilities and services available to the children in the facility;
6. The facility will provide for a medical and psychological examination of each child within seventy-two hours of admission and thereafter as needed by the child;
7. An interdisciplinary team will review each individual treatment plan at least monthly and update or amend the plan to meet the needs of the child;
8. The facility develops postdischarge plans and coordinates facility services and related community services with partial discharge plans with each child's

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<sup>158</sup> Section 25-03.2-03 was also amended by section 2 of Senate Bill No. 2051, chapter 274.

family, school, and community upon discharge to ensure continuity of care; and

9. The facility is in compliance with requirements for psychiatric residential treatment facilities under 42 U.S.C. 1396d [Pub. L. 89-97; 79 Stat. 351] and title 42, Code of Federal Regulations, part 441, and with this chapter and rules adopted under this chapter.

**SECTION 3. AMENDMENT.** Section 25-03.2-06 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.2-06. Admission criteria.**

A child may be admitted to a psychiatric residential treatment facility for children if, the :

1. The child has been diagnosed by a psychiatrist or psychologist as suffering from a mental illness or emotional disturbance and the child is in need of and able to respond to active psychotherapeutic intervention and cannot be effectively treated in the child's family, in another home, or in a ;
2. The child's situation meets the definition of serious risk of harm; and
3. A less restrictive setting. The facility must take into account the age and diagnosis of the child in order to provide an environment that is safe and therapeutic for all children cannot meet the immediate treatment need.

Approved April 10, 2023

Filed April 11, 2023

## CHAPTER 274

### SENATE BILL NO. 2051

(Human Services Committee)

(At the request of the Department of Health and Human Services)

AN ACT to create and enact a new section to chapters 25-03.2 and 50-06 of the North Dakota Century Code, relating to fingerprint criminal history record investigations for psychiatric residential facilities for children and for shelter care programs; and to amend and reenact subdivision f of subsection 2 of section 12-60-24 and sections 25-03.2-03, 25-03.2-04, 50-06-01.9, 50-11-06.8, 50-12-03, and 50-25.1-11.1 of the North Dakota Century Code, relating to fingerprint criminal history record checks for certified family foster home for children providers and psychiatric residential treatment facility for children, identifying who the department of health and human services may require criminal history record checks from, and criminal history record checks for volunteers and students for field placement at child-placing agencies and children's advocacy centers.

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

<sup>159</sup> **SECTION 1. AMENDMENT.** Subdivision f of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- f. The department of health and human services for foster care licenses, certified family foster home for children providers, approved tribal foster care facilities, and identified relatives under chapter 50-11, appointments of legal guardians under chapter 50-11.3, and petitions for adoptions under chapter 50-12, except that the criminal history record investigation must be conducted in accordance with those chapters. A criminal history record investigation completed under chapter 25-03.2, 50-06, 50-11, 50-11.3, or 50-12 may be used to satisfy the requirements of a criminal history record investigation under either of the other two~~four~~ chapters. The federal bureau of investigation's criminal history record investigation obtained from one criminal history record investigation purpose may not be reused to satisfy the requirements of another federal bureau of investigation's criminal history record investigation for a different purpose.

<sup>160</sup> **SECTION 2. AMENDMENT.** Section 25-03.2-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **25-03.2-03. Requirements for license.**

The department shall issue a license for the operation of a psychiatric residential treatment facility for children upon a showing that:

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<sup>159</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1191, chapter 447, section 1 of Senate Bill No. 2076, chapter 120, and section 1 of Senate Bill No. 2102, chapter 214.

<sup>160</sup> Section 25-03.2-03 was also amended by section 2 of House Bill No. 1043, chapter 273.

1. The premises to be used are in fit, safe, and sanitary condition and properly equipped to provide good care and treatment;
2. The program director of the facility holds, at a minimum, a master's degree in social work, psychology, or in a related field with at least two years of professional experience in the treatment of children suffering from mental illnesses or emotional disturbances. The executive director of the facility must have, at a minimum, a bachelor's degree in a behavioral science or a bachelor's degree in any field and two years of experience in administration;
3. The staff employed by the facility is supervised by the program director and qualified by training and experience to provide services to children suffering from mental illnesses or emotional disturbances. The facility annually must provide training to staff which is relevant to the needs of the client population;
4. The health, safety, and well-being of the children cared for and treated in the facility will be properly safeguarded;
5. There are sufficient treatment, educational, recreational and leisure, and physical facilities and services available to the children in the facility;
6. The facility will provide for a medical and psychological examination of each child within seventy-two hours of admission and thereafter as needed by the child;
7. An interdisciplinary team will review each individual treatment plan at least monthly and update or amend the plan to meet the needs of the child;
8. The facility develops postdischarge plans and coordinates facility services and related community services with partial discharge plans with each child's family, school, and community upon discharge to ensure continuity of care; and
9. The facility is in compliance with requirements for psychiatric residential treatment facilities under 42 U.S.C. 1396d [Pub. L. 89-97; 79 Stat. 351] and title 42, Code of Federal Regulations, part 441, and with this chapter and rules adopted under this chapter;
10. The facility has sought and obtained a criminal history record when required by this chapter; and
11. In accordance with rules of the department, the department has determined whether a license may be issued to a facility that has a facility operator or any individual employed by the facility, contracted service provider of the facility, or nonemployee of the facility, having contact with any child cared for by the facility who has a criminal record.

**SECTION 3. AMENDMENT.** Section 25-03.2-04 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.2-04. Conviction not bar to licensure - Exceptions.**

Conviction of an offense by an owner or operator of a facility does not disqualify the center/psychiatric residential treatment facility for children from licensure unless the department determines that the offense has a direct bearing upon a person's ability to serve the public as an owner or operator of a psychiatric residential

treatment facility for children, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

**SECTION 4.** A new section to chapter 25-03.2 of the North Dakota Century Code is created and enacted as follows:

**Criminal history record investigation - Fingerprinting required.**

1. Each psychiatric residential treatment facility for children shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law from a facility operator, and any individual employed by the facility, contracted service provider of the facility, and nonemployee of the facility, having contact with any child cared for by the facility.
2. The facility shall assure information obtained under subsection 1 is provided to the department.
3. Upon receipt of all fingerprints and necessary information relating to a criminal history record investigation, the department shall submit the information and fingerprints to the bureau of criminal investigation. The department shall provide a copy of the state criminal history record information response received from the bureau of criminal investigation to the facility or authorized agent making the request.
4. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department. The bureau of criminal investigation also shall provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department.
5. Upon request by the operators of a facility or employees of a facility, a law enforcement agency shall take fingerprints of individuals described in this section if the request is made for purposes of this section.
6. The department shall pay the cost of securing fingerprints, any criminal history record information made available under chapter 12-60, and a nationwide background check for each psychiatric residential treatment facility for children.
7. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.
8. A criminal history record investigation completed under this section may be used to satisfy the criminal history record investigation requirements of sections 50-06-01.9, 50-11-06.8, 50-11.3-01, and 50-12-03.2 and section 6 of this Act. The federal bureau of investigation's criminal history record investigation obtained from one criminal history record investigation purpose may not be reused to satisfy the requirements for another federal bureau of investigation's criminal history record investigation for a different purpose.

**SECTION 5. AMENDMENT.** Section 50-06-01.9 of the North Dakota Century Code is amended and reenacted as follows:

### **50-06-01.9. Criminal history record checks.**

In accordance with section 12-60-24, the department may require criminal history record checks as the department determines appropriate for:

1. Job applicants of the department and employees of the department ~~upon hiring~~ part of contingent offer of employment;
2. Job applicants of the human service zone, current employees of the human service zone and department, and the department's and human service zones' contractors and contractors' subcontractors' job applicants and current employees that may have access to federal tax information received from the United States internal revenue service through a computer match and stored in the department's eligibility system;
3. A criminal history record check conducted under subsections 1 and 2 is valid for ~~ten~~ five years, after which the department shall require another criminal history record check on employees of the department, human service zones, and the department's and human service zones' contractors and contractors' subcontractors that may have access to federal tax information received from the United States internal revenue service through a computer match and stored in the department's eligibility system;
4. The department's and human service zones' contractors and contractors' subcontractors job applicants and current employees of contractors and contractors' subcontractors that may have access to social security administration information received from the United States social security administration stored in the department's eligibility system;
5. Providers licensed by the department under chapter 50-12, as well as for any employees, volunteers, or students for field placement of those providers who have direct contact with families, with children, or both;
- ~~5-6.~~ Providers holding, applicants for, and emergency designees and staff members of providers holding and applicants for early childhood services licensure, self-declaration, or in-home provider registration under chapter 50-11.1. The department also may require criminal history record checks for household members of a residence out of which early childhood services within the provider's home are provided; ~~and~~
- ~~6-7.~~ Medicaid services applicant providers, Medicaid services providers, or an individual with a five percent or more direct or indirect ownership interest in the applicant provider or provider under chapter 50-24.1;
8. An operator of a facility licensed by the department under chapter 25-03.2, as well as any individual employed by the facility, contracted service provider of the facility, and nonemployee of the facility, having contact with any child cared for by the facility; and
9. Providers, applicants for, and employees of a shelter care program certified by the department under chapter 50-06.

**SECTION 6.** A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

### **Shelter care criminal history record investigation - Fingerprinting required.**

1. Each shelter care program shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law from any individual employed by the shelter care program.
2. The shelter care program shall assure information obtained under subsection 1 is provided to the department.
3. Upon receipt of all fingerprints and necessary information relating to a criminal history record investigation, the department shall submit the information and fingerprints to the bureau of criminal investigation. The department shall provide a copy of the state criminal history record information response received from the bureau of criminal investigation to the shelter care program or authorized agent making the request.
4. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department. The bureau of criminal investigation also shall provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department.
5. Upon request by the provider or employees of a provider, a law enforcement agency shall take fingerprints of individuals described in this section if the request is made for purposes of this section.
6. The department shall pay the cost of securing fingerprints, any criminal history record information made available under chapter 12-60, and a nationwide background check for each shelter care provider.
7. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.
8. A criminal history record investigation completed under this section may be used to satisfy the criminal history record investigation requirements of sections 50-06-01.9, 50-11-06.8, 50-11.3-01, and 50-12-03.2 and section 2 of this Act. The federal bureau of investigation's criminal history record investigation obtained from one criminal history record investigation purpose may not be reused to satisfy the requirements for another federal bureau of investigation's criminal history record investigation for a different purpose.
9. Before certifying a shelter care program and during the shelter care program operation, the department shall seek a criminal history record when required by this section. The department, in accordance with the rules of the department, shall consider any criminal history information available at the time a decision is made for certification and during the operation of the certified shelter care program.
10. "Shelter care program" means a nonsecure permanent dwelling run by an agency with certification obtained by the department, where employees offer safe shelter, food, and structured routine and is available twenty-four hours a day to a resident age ten to eighteen years old in need of temporary safe out-of-home emergency placement, not to exceed seven days, unless otherwise approved by the department.

**SECTION 7. AMENDMENT.** Section 50-11-06.8 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-06.8. Criminal history record investigation - Fingerprinting required.**

1. Each facility providing foster care for children shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law from:
  - a. Any individual employed by, or providing care in, the facility; and
  - b. Any adult living in the facility, but not being provided care in the facility.
2. Each identified relative, at the request by the department, shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law from the identified relative and any adult living in the home of the identified relative.
3. Each certified family foster home for children provider, at the request of the department, shall secure from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law from the certified family foster home for children provider and any adult living in the home of the certified family foster home for children provider.
4. The facility, certified family foster home for children provider, or identified relative shall assure that information obtained under subsections 1 ~~and~~, 2, and 3 is provided to the department.
- 4-5. Upon receipt of all fingerprints and necessary information relating to a criminal history record investigation, the department shall submit the information and fingerprints to the bureau of criminal investigation. The department shall provide a copy of the state criminal history record information response received from the bureau of criminal investigation to the facility, certified family foster home for children provider, identified relative, public agency, or authorized agent making the request.
- 5-6. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department. The bureau of criminal investigation also shall provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department.
- 6-7. Upon request by the operators of a facility, employees of a facility, certified family foster home for children provider, or identified relative, a law enforcement agency shall take fingerprints of individuals described in this section if the request is made for purposes of this section.
- 7-8. The department shall pay the cost of securing fingerprints, any criminal history record information made available under chapter 12-60, and a nationwide

background check for each facility providing foster care for children, certified family foster home for children provider, and identified relative.

- 8-9. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.
- 9-10. Except as provided in sections 50-11-02.4 and 50-11-06.9, the department shall secure from a law enforcement agency or any other agency authorized to take fingerprints two sets of fingerprints and all other information necessary to secure state criminal history record information and a nationwide background check under federal law from:
- a. Any individual employed by, or providing care in, an adult family foster care facility; and
  - b. Any adult living in an adult family foster care facility, but not being provided care in the facility.
- 40-11. A criminal history record investigation completed under this section may be used to satisfy the criminal history record investigation requirements of sections 50-06-01.9, 50-11.3-01, and 50-12-03.2 and sections 2 and 6 of this Act. The federal bureau of investigation's criminal history record investigation obtained from one criminal history record investigation purpose may not be reused to satisfy the requirements for another federal bureau of investigation's criminal history record investigation for a different purpose.

**SECTION 8. AMENDMENT.** Section 50-12-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-12-03. Requirements for licensure and employment - Term - Moral or religious conviction not bar to licensure or employment.**

The department of health and 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, volunteer, or student for field placement of a child-placing agency who has direct contact with families, with children, or with both. The department of health and 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 health and 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 9. AMENDMENT.** Section 50-25.1-11.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-11.1. Children's advocacy centers - Confidentiality of records - Criminal history record checks.**

1. Records and digital media in the possession of a children's advocacy center relating to a forensic medical examination, forensic interview, or therapy are confidential and may be released only to a person other than a law enforcement agency, the department or the department's authorized agent, or a medical or mental health professional when the child comes before the medical or mental health professional in that person's professional capacity, upon service of a subpoena signed by a judge.
2. The department may submit a request for a criminal history record check under section 12-60-24 on a board member, an employee, a final applicant for employment, of a children's advocacy center, a contractor, ~~multidisciplinary team member~~, or volunteer of a children's advocacy center who has contact with a child at or through a children's advocacy center.
3. As used in this section, "board member" means an individual serving on the board of a children's advocacy center.

Approved April 13, 2023

Filed April 14, 2023

# INSURANCE

## CHAPTER 275

### SENATE BILL NO. 2172

(Senators Klein, Larsen, Vedaa)  
(Representatives Kasper, Louser)

AN ACT to create and enact a new chapter to title 26.1 of the North Dakota Century Code, relating to the interstate insurance product regulation compact.

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

**SECTION 1.** A new chapter to title 26.1 of the North Dakota Century Code is created and enacted as follows:

#### ARTICLE I - PURPOSES

The purposes of this compact are, through means of joint and cooperative action among the compacting states:

1. To promote and protect the interest of consumers of individual and group annuity, life insurance, disability income, and long-term care insurance products;
2. To develop uniform standards for insurance products covered under the compact;
3. To establish a central clearinghouse to receive and provide prompt review of insurance products covered under the compact and, in certain cases, advertisements related thereto, submitted by insurers authorized to do business in one or more compacting states;
4. To give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard;
5. To improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the compact;
6. To create the interstate insurance product regulation commission; and
7. To perform these and such other related functions as may be consistent with the state regulation of the business of insurance.

#### ARTICLE II - DEFINITIONS

For purposes of this compact:

1. "Advertisement" means any material designed to create public interest in a product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace, or retain a policy, as more specifically defined in the rules and operating procedures of the commission.
2. "Bylaws" mean those bylaws established by the commission for its governance, or for directing or controlling the commission's actions or conduct.
3. "Compacting state" means any state which has enacted this compact legislation and which has not withdrawn pursuant to subsection 1 of article XIV, or been terminated pursuant to subsection 2 of article XIV.
4. "Commission" means the "interstate insurance product regulation commission" established by this compact.
5. "Commissioner" means the chief insurance regulatory official of a state including, but not limited to commissioner, superintendent, director, or administrator.
6. "Domiciliary state" means the state in which an insurer is incorporated or organized; or, in the case of an alien insurer, its state of entry.
7. "Insurer" means any entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by this chapter.
8. "Member" means the person chosen by a compacting state as its representative to the commission, or his or her designee.
9. "Noncompacting state" means any state which is not at the time a compacting state.
10. "Operating procedures" mean procedures promulgated by the commission implementing a rule, uniform standard, or a provision of this compact.
11. "Product" means the form of a policy or contract, including any application, endorsement, or related form which is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income, or long-term care insurance product that an insurer is authorized to issue.
12. "Rule" means a statement of general or particular applicability and future effect promulgated by the commission, including a uniform standard developed pursuant to article VII of this compact, designed to implement, interpret, or prescribe law or policy, or describing the organization, procedure, or practice requirements of the commission, which shall have the force and effect of law in the compacting states.
13. "State" means any state, district, or territory of the United States of America.
14. "Third-party filer" means an entity that submits a product filing to the commission on behalf of an insurer.
15. "Uniform standard" means a standard adopted by the commission for a product line, pursuant to article VII of this compact, and shall include all of the

product requirements in aggregate; provided, that each uniform standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading, or ambiguous provisions in a product and the form of the product made available to the public shall not be unfair, inequitable, or against public policy as determined by the commission.

### **ARTICLE III - ESTABLISHMENT OF THE COMMISSION AND VENUE**

1. The compacting states hereby create and establish a joint public agency known as the "interstate insurance product regulation commission". Pursuant to article IV, the commission will have the power to develop uniform standards for product lines, receive and provide prompt review of products filed therewith, and give approval to those product filings satisfying applicable uniform standards, provided, it is not intended for the commission to be the exclusive entity for receipt and review of insurance product filings. Nothing herein shall prohibit any insurer from filing its product in any state wherein the insurer is licensed to conduct the business of insurance; and any such filing shall be subject to the laws of the state where filed.
2. The commission is a body corporate and politic, and an instrumentality of the compacting states.
3. The commission is solely responsible for its liabilities except as otherwise specifically provided in this compact.
4. Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located.

### **ARTICLE IV - POWERS OF THE COMMISSION**

The commission shall have the following powers:

1. To promulgate rules, pursuant to article VII of this compact, which shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in this compact;
2. To exercise its rulemaking authority and establish reasonable uniform standards for products covered under the compact, and advertisement related thereto, which shall have the force and effect of law and shall be binding in the compacting states, but only for those products filed with the commission, provided, that a compacting state shall have the right to opt-out of such uniform standard pursuant to article VII, to the extent and in the manner provided in this compact, and, provided further, that any uniform standard established by the commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the national association of insurance commissioners' long-term care insurance model act and long-term care insurance model regulation, respectively, adopted as of 2001. The commission shall consider whether any subsequent amendments to the national association of insurance commissioners' long-term care insurance model act or long-term care insurance model regulation adopted by the national association of insurance commissioners require amending of the uniform standards established by the commission for long-term care insurance products;

3. To receive and review in an expeditious manner products filed with the commission, and rate filings for disability income and long-term care insurance products, and give approval of those products and rate filings that satisfy the applicable uniform standard, where such approval shall have the force and effect of law and be binding on the compacting states to the extent and in the manner provided in the compact;
4. To receive and review in an expeditious manner advertisement relating to long-term care insurance products for which uniform standards have been adopted by the commission, and give approval to all advertisement that satisfies the applicable uniform standard. For any product covered under this compact, other than long-term care insurance products, the commission shall have the authority to require an insurer to submit all or any part of its advertisement with respect to that product for review or approval prior to use, if the commission determines that the nature of the product is such that an advertisement of the product could have the capacity or tendency to mislead the public. The actions of the commission as provided in this section shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in the compact;
5. To exercise its rulemaking authority and designate products and advertisement that may be subject to a self-certification process without the need for prior approval by the commission;
6. To promulgate operating procedures, pursuant to article VII of this compact, which shall be binding in the compacting states to the extent and in the manner provided in this compact;
7. To bring and prosecute legal proceedings or actions in its name as the commission, provided, that the standing of any state insurance department to sue or be sued under applicable law shall not be affected;
8. To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence;
9. To establish and maintain offices;
10. To purchase and maintain insurance and bonds;
11. To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a compacting state;
12. To hire employees, professionals, or specialists, and elect or appoint officers, and to fix their compensation, define their duties, and give them appropriate authority to carry out the purposes of the compact, and determine their qualifications; and to establish the commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;
13. To accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same, provided that at all times the commission shall strive to avoid any appearance of impropriety;

14. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed, provided that at all times the commission shall strive to avoid any appearance of impropriety;
15. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
16. To remit filing fees to compacting states as may be set forth in the bylaws, rules, or operating procedures;
17. To enforce compliance by compacting states with rules, uniform standards, operating procedures, and bylaws;
18. To provide for dispute resolution among compacting states;
19. To advise compacting states on issues relating to insurers domiciled or doing business in noncompacting jurisdictions, consistent with the purposes of this compact;
20. To provide advice and training to those personnel in state insurance departments responsible for product review, and to be a resource for state insurance departments;
21. To establish a budget and make expenditures;
22. To borrow money;
23. To appoint committees, including advisory committees comprising members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in the bylaws;
24. To provide and receive information from, and to cooperate with, law enforcement agencies;
25. To adopt and use a corporate seal; and
26. To perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of the business of insurance.

#### **ARTICLE V - ORGANIZATION OF THE COMMISSION**

1. Membership, voting, and bylaws.
  - a. Each compacting state shall have and be limited to one member. Each member shall be qualified to serve in that capacity pursuant to applicable law of the compacting state. Any member may be removed or suspended from office as provided by the law of the state from which he or she shall be appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state wherein the vacancy exists. Nothing herein shall be construed to affect the manner in which a compacting state determines the election or appointment and qualification of its own commissioner.

- b. Each member shall be entitled to one vote and shall have an opportunity to participate in the governance of the commission in accordance with the bylaws. Notwithstanding any provision herein to the contrary, no action of the commission with respect to the promulgation of a uniform standard shall be effective unless two-thirds of the members vote in favor thereof.
- c. The commission shall, by a majority of the members, prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers, of the compact, including, but not limited to:
  - (1) Establishing the fiscal year of the commission;
  - (2) Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the management committee;
  - (3) Providing reasonable standards and procedures:
    - a. For the establishment and meetings of other committees; and
    - b. Governing any general or specific delegation of any authority or function of the commission;
  - (4) Providing reasonable procedures for calling and conducting meetings of the commission that consists of a majority of commission members, ensuring reasonable advance notice of each such meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting en toto or in part. As soon as practicable, the commission must make public:
    - a. A copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed; and
    - b. Votes taken during such meeting;
  - (5) Establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the commission;
  - (6) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the commission;
  - (7) Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees; and
  - (8) Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment and/or reserving of all of its debts and obligations.

d. The commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the compacting states.

2. Management committee, officers, and personnel.

a. A management committee comprising no more than fourteen members shall be established as follows:

(1) One member from each of the six compacting states with the largest premium volume for individual and group annuities, life, disability income, and long-term care insurance products, determined from the records of the national association of insurance commissioners for the prior year;

(2) Four members from those compacting states with at least two percent of the market based on the premium volume described above, other than the six compacting states with the largest premium volume, selected on a rotating basis as provided in the bylaws; and

(3) Four members from those compacting states with less than two percent of the market, based on the premium volume described above, with one selected from each of the four zone regions of the national association of insurance commissioners as provided in the bylaws.

b. The management committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to:

(1) Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;

(2) Establishing and overseeing an organizational structure within, and appropriate procedures for, the commission to provide for the creation of uniform standards and other rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a compacting state to opt-out of a uniform standard, provided that a uniform standard shall not be submitted to the compacting states for adoption unless approved by two-thirds of the members of the management committee;

(3) Overseeing the offices of the commission; and

(4) Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the commission.

c. The commission shall elect annually officers from the management committee, with each having such authority and duties, as may be specified in the bylaws.

d. The management committee may, subject to the approval of the commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the commission may deem appropriate. The executive director shall serve as secretary to

the commission, but shall not be a member of the commission. The executive director shall hire and supervise such other staff as may be authorized by the commission.

3. Legislative and advisory committees.

- a. A legislative committee comprising state legislators or their designees shall be established to monitor the operations of, and make recommendations to, the commission, including the management committee, provided that the manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget, or other significant matter as may be provided in the bylaws, the management committee shall consult with and report to the legislative committee.
- b. The commission shall establish two advisory committees, one of which shall comprise consumer representatives independent of the insurance industry, and the other comprising insurance industry representatives.
- c. The commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.

4. Corporate records of the commission. The commission shall maintain its corporate books and records in accordance with the bylaws.

5. Qualified immunity, defense, and indemnification.

- a. The members, officers, executive director, employees, and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that nothing in this subdivision shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of that person.
- b. The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel, and provided further that the actual or alleged act, error, or omission did not result from that person's intentional or willful and wanton misconduct.
- c. The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such

person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful and wanton misconduct of that person.

#### **ARTICLE VI - MEETINGS AND ACTS OF THE COMMISSION**

1. The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.
2. Each member of the commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the commission. A member shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.
3. The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

#### **ARTICLE VII - RULES AND OPERATING PROCEDURES - RULEMAKING FUNCTIONS OF THE COMMISSION AND OPTING OUT OF UNIFORM STANDARDS**

1. Rulemaking authority. The commission shall promulgate reasonable rules, including uniform standards, and operating procedures in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this chapter, or the powers granted hereunder, then such an action by the commission shall be invalid and have no force and effect.
2. Rulemaking procedure. Rules and operating procedures shall be made pursuant to a rulemaking process that conforms to the model state administrative procedure act of 1981 as amended, as may be appropriate to the operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committee(s) in each compacting state responsible for insurance issues of its intention to adopt the uniform standard. The commission in adopting a uniform standard shall consider fully all submitted materials and issue a concise explanation of its decision.
3. Effective date and opt-out of a uniform standard. A uniform standard shall become effective ninety days after its promulgation by the commission or such later date as the commission may determine; provided, however, that a compacting state may opt-out of a uniform standard as provided in this article. "Opt-out" shall be defined as any action by a compacting state to decline to adopt or participate in a promulgated uniform standard. All other rules and operating procedures, and amendments thereto, shall become effective as of the date specified in each rule, operating procedure, or amendment.
4. Opt-out procedure.
  - a. A compacting state may opt-out of a uniform standard, either by legislation or regulation duly promulgated by the insurance department under the compacting state's administrative procedure act. If a compacting state

elects to opt-out of a uniform standard by regulation, it must give written notice to the commission no later than ten business days after the uniform standard is promulgated, or at the time the state becomes a compacting state and must find that the uniform standard does not provide reasonable protections to the citizens of the state, given the conditions in the state. The commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state which warrant a departure from the uniform standard and determining that the uniform standard would not reasonably protect the citizens of the state. The commissioner must consider and balance the following factors and find that the conditions in the state and needs of the citizens of the state outweigh the intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to this chapter and the presumption that a uniform standard adopted by the commission provides reasonable protections to consumers of the relevant product. Notwithstanding the foregoing, a compacting state may, at the time of its enactment of this compact, prospectively opt-out of all uniform standards involving long-term care insurance products by expressly providing for such opt-out in the enacted compact, and such an opt-out shall not be treated as a material variance in the offer or acceptance of any state to participate in this compact. Such an opt-out shall be effective at the time of enactment of this compact by the compacting state and shall apply to all existing uniform standards involving long-term care insurance products and those subsequently promulgated.

b. In accordance with subdivision a, North Dakota opts out of all existing and prospective uniform standards involving long-term care insurance products in order to preserve North Dakota's statutory requirements governing long-term care insurance products.

5. Effect of opt-out. If a compacting state elects to opt-out of a uniform standard, the uniform standard shall remain applicable in the compacting state electing to opt-out until such time the opt-out legislation is enacted into law or the regulation opting out becomes effective. Once the opt-out of a uniform standard by a compacting state becomes effective as provided under the laws of that state, the uniform standard shall have no further force and effect in that state unless and until the legislation or regulation implementing the opt-out is repealed or otherwise becomes ineffective under the laws of the state. If a compacting state opts out of a uniform standard after the uniform standard has been made effective in that state, the opt-out shall have the same prospective effect as provided under article XIV for withdrawals.

6. Stay of uniform standard. If a compacting state has formally initiated the process of opting out of a uniform standard by regulation, and while the regulatory opt-out is pending, the compacting state may petition the commission, at least fifteen days before the effective date of the uniform standard, to stay the effectiveness of the uniform standard in that state. The commission may grant a stay if it determines the regulatory opt-out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the commission, the stay or extension thereof may postpone the effective date by up to ninety days, unless affirmatively extended by the commission, provided a stay may not be permitted to remain in effect for more than one year unless the compacting state can show extraordinary circumstances which warrant a continuance of the stay, including, but not

limited to, the existence of a legal challenge which prevents the compacting state from opting out. A stay may be terminated by the commission upon notice that the rulemaking process has been terminated.

7. Not later than thirty days after a rule or operating procedure is promulgated, any person may file a petition for judicial review of the rule or operating procedure, provided that the filing of such a petition shall not stay or otherwise prevent the rule or operating procedure from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the commission consistent with applicable law and shall not find the rule or operating procedure to be unlawful if the rule or operating procedure represents a reasonable exercise of the commission's authority.

### **ARTICLE VIII - COMMISSION RECORDS AND ENFORCEMENT**

1. The commission shall promulgate rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals and insurers' trade secrets. The commission may promulgate additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records, and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.
2. Except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state commissioner of the duty to disclose any relevant records, data, or information to the commission, provided that disclosure to the commission shall not be deemed to waive or otherwise affect any confidentiality requirement, and further provided that, except as otherwise expressly provided in this chapter, the commission shall not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its possession. Confidential information of the commission shall remain confidential after such information is provided to any commissioner.
3. The commission shall monitor compacting states for compliance with duly adopted bylaws, rules, including uniform standards, and operating procedures. The commission shall notify any noncomplying compacting state in writing of its noncompliance with commission bylaws, rules, or operating procedures. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state shall be deemed to be in default as set forth in article XIV.
4. The commissioner of any state in which an insurer is authorized to do business, or is conducting the business of insurance, shall continue to exercise his or her authority to oversee the market regulation of the activities of the insurer in accordance with the provisions of the state's law. The commissioner's enforcement of compliance with the compact is governed by the following provisions:
  - a. With respect to the commissioner's market regulation of a product or advertisement that is approved or certified to the commission, the content

of the product or advertisement shall not constitute a violation of the provisions, standards, or requirements of the compact except upon a final order of the commission, issued at the request of a commissioner after prior notice to the insurer and an opportunity for hearing before the commission.

- b. Before a commissioner may bring an action for violation of any provision, standard, or requirement of the compact relating to the content of an advertisement not approved or certified to the commission, the commission, or an authorized commission officer or employee, must authorize the action. However, authorization pursuant to this subdivision does not require notice to the insurer, opportunity for hearing, or disclosure of requests for authorization or records of the commission's action on such requests.

### **ARTICLE IX - DISPUTE RESOLUTION**

The commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and which may arise between two or more compacting states, or between compacting states and noncompacting states, and the commission shall promulgate an operating procedure providing for resolution of such disputes.

### **ARTICLE X - PRODUCT FILING AND APPROVAL**

1. Insurers and third-party filers seeking to have a product approved by the commission shall file the product with, and pay applicable filing fees to, the commission. Nothing in this chapter shall be construed to restrict or otherwise prevent an insurer from filing its product with the insurance department in any state wherein the insurer is licensed to conduct the business of insurance, and such filing shall be subject to the laws of the states where filed.
2. The commission shall establish appropriate filing and review processes and procedures pursuant to commission rules and operating procedures. Notwithstanding any provision herein to the contrary, the commission shall promulgate rules to establish conditions and procedures under which the commission will provide public access to product filing information. In establishing such rules, the commission shall consider the interests of the public in having access to such information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a product filing or supporting information.
3. Any product approved by the commission may be sold or otherwise issued in those compacting states for which the insurer is legally authorized to do business.

### **ARTICLE XI - REVIEW OF COMMISSION DECISIONS REGARDING FILINGS**

1. Not later than thirty days after the commission has given notice of a disapproved product or advertisement filed with the commission, the insurer or third-party filer whose filing was disapproved may appeal the determination to a review panel appointed by the commission. The commission shall promulgate rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the commission, in disapproving a product or advertisement filed with the commission, acted

arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with subsection 4 of article III.

2. The commission shall have authority to monitor, review, and reconsider products and advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant uniform standard. Where appropriate, the commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in subsection 1.

## **ARTICLE XII - FINANCE**

1. The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the commission may accept contributions and other forms of funding from the national association of insurance commissioners, compacting states, and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the commission concerning the performance of its duties shall not be compromised.
2. The commission shall collect a filing fee from each insurer and third-party filer filing a product with the commission to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.
3. The commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in article VII of this compact.
4. The commission shall be exempt from all taxation in and by the compacting states.
5. The commission shall not pledge the credit of any compacting state, except by and with the appropriate legal authority of that compacting state.
6. The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports including the system of internal controls and procedures of the commission shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but no less frequently than every three years, the review of the independent auditor shall include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of the compacting states, which shall include a report of the independent audit. The commission's internal accounts shall not be confidential and such materials may be shared with the commissioner of any compacting state upon request provided, however, that any work papers related to any internal or independent audit and any information regarding the privacy of individuals and insurers' proprietary information, including trade secrets, shall remain confidential.
7. No compacting state shall have any claim to or ownership of any property held by or vested in the commission or to any commission funds held pursuant to the provisions of this compact.

**ARTICLE XIII - COMPACTING STATES, EFFECTIVE DATE, AND AMENDMENT**

1. Any state is eligible to become a compacting state.
2. The compact shall become effective and binding upon legislative enactment of the compact into law by two compacting states, provided the commission shall become effective for purposes of adopting uniform standards for, reviewing, and giving approval or disapproval of products filed with the commission that satisfy applicable uniform standards only after twenty-six states are compacting states or, alternatively, by states representing greater than forty percent of the premium volume for life insurance, annuity, disability income, and long-term care insurance products, based on records of the national association of insurance commissioners for the prior year. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state.
3. Amendments to the compact may be proposed by the commission for enactment by the compacting states. No amendment shall become effective and binding upon the commission and the compacting states unless and until all compacting states enact the amendment into law.

**ARTICLE XIV - WITHDRAWAL, DEFAULT, AND TERMINATION**

1. Withdrawal.
  - a. Once effective, the compact shall continue in force and remain binding upon each and every compacting state, provided that a compacting state may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute which enacted the compact into law.
  - b. The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any product filings approved or self-certified, or any advertisement of such products, on the date the repealing statute becomes effective, except by mutual agreement of the commission and the withdrawing state unless the approval is rescinded by the withdrawing state as provided in subdivision e.
  - c. The commissioner of the withdrawing state shall immediately notify the management committee in writing upon the introduction of legislation repealing this compact in the withdrawing state.
  - d. The commission shall notify the other compacting states of the introduction of such legislation within ten days after its receipt of notice thereof.
  - e. The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state. The commission's approval of products and advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the withdrawing state, unless formally rescinded by the withdrawing state in the same manner as provided by the laws of the withdrawing state for the prospective

disapproval of products or advertisement previously approved under state law.

- f. Reinstatement following withdrawal of any compacting state shall occur upon the effective date of the withdrawing state reenacting the compact.

## 2. Default.

- a. If the commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the bylaws or duly promulgated rules or operating procedures, then, after notice and hearing as set forth in the bylaws, all rights, privileges, and benefits conferred by this compact on the defaulting state shall be suspended from the effective date of default as fixed by the commission. The grounds for default include, but are not limited to, failure of a compacting state to perform its obligations or responsibilities, and any other grounds designated in commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.
- b. Product approvals by the commission or product self-certifications, or any advertisement in connection with such product, that are in force on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to subsection 1.
- c. Reinstatement following termination of any compacting state requires a reenactment of the compact.

## 3. Dissolution of compact.

- a. The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.
- b. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

## **ARTICLE XV - SEVERABILITY AND CONSTRUCTION**

1. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.
2. The provisions of this compact shall be liberally construed to effectuate its purposes.

**ARTICLE XVI - BINDING EFFECT OF COMPACT AND OTHER LAWS**1. Other laws.

- a. Nothing herein prevents the enforcement of any other law of a compacting state, except as provided in subdivision b.
- b. For any product approved or certified to the commission, the rules, uniform standards, and any other requirements of the commission shall constitute the exclusive provisions applicable to the content, approval, and certification of such products. For advertisement that is subject to the commission's authority, any rule, uniform standard, or other requirement of the commission which governs the content of the advertisement shall constitute the exclusive provision that a commissioner may apply to the content of the advertisement. Notwithstanding the foregoing, no action taken by the commission shall abrogate or restrict:
  - (1) The access of any person to state courts;
  - (2) Remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the product;
  - (3) State law relating to the construction of insurance contracts; or
  - (4) The authority of the attorney general of the state, including, but not limited to, maintaining any actions or proceedings, as authorized by law.
- c. All insurance products filed with individual states shall be subject to the laws of those states.

2. Binding effect of this compact.

- a. All lawful actions of the commission, including all rules and operating procedures promulgated by the commission, are binding upon the compacting states.
- b. All agreements between the commission and the compacting states are binding in accordance with their terms.
- c. Upon the request of a party to a conflict over the meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation in dispute.
- d. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the commission shall be ineffective as to that compacting state, and those obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which those obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

Filed April 10, 2023

## CHAPTER 276

### SENATE BILL NO. 2349

(Senators Klein, Lemm, Wanzek)  
(Representatives Brandenburg, D. Johnson, Vigesaa)

AN ACT to create and enact a new section to chapter 26.1-02 of the North Dakota Century Code, relating to exemption from insurance regulations for nonprofit agricultural membership organizations.

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

**SECTION 1.** A new section to chapter 26.1-02 of the North Dakota Century Code is created and enacted as follows:

##### **Nonprofit agricultural membership organizations.**

1. Except as provided under this section, a nonprofit agricultural membership organization is not subject to this title or the jurisdiction of the commissioner. Health care coverage provided by a nonprofit agricultural membership organization to members of the organization is not insurance regulated under this title.
2. Any risk arising out of the health care coverage provided by a nonprofit agricultural membership organization or an affiliate of the organization must be reinsured by a company authorized to conduct insurance in this state.
3. A nonprofit agricultural membership organization may not provide health care coverage under this section unless the organization has filed with the commissioner verification the organization meets the requirements of this section.
4. Health care coverage under this section may be sold only by an insurance producer who is both appointed by the nonprofit agricultural membership organization and licensed as an insurance producer to sell or solicit health insurance in this state.
5. Health care coverage under this section must provide benefits under a self-funded arrangement administered by an entity that holds a certificate of authority under section 26.1-27-03.
6. A health care coverage application for coverage under this section and any related contract provided to the member prominently must state the health care coverage is not insurance, is not provided by an insurance company, is not subject to the laws and rules governing insurance, and is not subject to the jurisdiction of the commissioner.
7. As used in this section, "nonprofit agricultural membership organization" means an organization incorporated under the laws of this state before August 1, 2023, for the purpose of promoting the interests of farmers in the state, or an affiliate of the organization, which organization or affiliate provides

health care coverage for members and the families of the members pursuant to a contract between the member and the organization or affiliate.

Approved April 13, 2023

Filed April 14, 2023

## CHAPTER 277

### SENATE BILL NO. 2056

(Industry and Business Committee)  
(At the request of the Insurance Commissioner)

AN ACT to amend and reenact sections 26.1-02-02, 26.1-03-11, and 26.1-36.4-06, and subsection 2 of section 26.1-36.7-05 of the North Dakota Century Code, relating to the insurance commissioner's red tape reduction.

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

**SECTION 1. AMENDMENT.** Section 26.1-02-02 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-02-02. Duty of commissioner before granting or renewing certificate of authority.**

The commissioner must be satisfied by examination and evidence that an insurance company is legally qualified to transact business in this state, ~~including compliance with section 26.1-03-11,~~ before granting a certificate of authority to the company to issue policies or make insurance contracts. A certificate of authority issued under this title remains in force in perpetuity if the required renewal fee is paid by April thirtieth of each year and the commissioner is satisfied that ~~the documents required by section 26.1-03-11 have been filed,~~ the statements and evidences of investment required of the company have been furnished, the required capital or surplus or both, securities, and investments remain secure, and all other requirements of law are met. Any company which neglects to pay the renewal fee by April thirtieth forfeits twenty-five dollars for each day's neglect.

**SECTION 2. AMENDMENT.** Section 26.1-03-11 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-03-11. Fire companies to report statistical data - Failure to report - Exceptions to reporting requirements - Penalty.**

Each insurance company issuing fire insurance policies covering property in this state annually shall report information setting forth the amount of earned premiums in this state for policies covering insured property located in this state and the amount of claims incurred. This information is not to include personal lines or farm property insurance. This information must be reported on a form prescribed by the commissioner. ~~The company shall file the form with the commissioner or shall certify to the commissioner that the information has been reported directly to an advisory organization upon whose filings the majority of the fire insurance rates for North Dakota are based.~~ The form ~~or certification~~ must accompany the annual statement required under section 26.1-03-07. An insurance company that fails to furnish the form on or before March first is subject to a penalty of one hundred dollars per day. The commissioner may revoke or suspend the certificate of authority of an insurance company that fails to file the form required in this section. If satisfied the delay was excusable, the insurance commissioner may waive, and if paid, issue a premium tax credit in an amount up to fifty percent of the penalty ~~and interest.~~ The insurance

commissioner shall deposit in the insurance tax distribution fund monetary penalties collected under this section.

**SECTION 3. 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.~~

**SECTION 4. AMENDMENT.** Subsection 2 of section 26.1-36.7-05 of the North Dakota Century Code is amended and reenacted as follows:

2. The board shall:
  - a. Formulate general policies to advance the purposes of this chapter;
  - b. ~~Schedule and approve independent biennial audits in order to:~~
    - (1) ~~Ensure claims are being processed appropriately and only include services covered by the individual health benefit plan for the contracted rates; and~~
    - (2) ~~Verify that the assessment base is accurate and that the appropriate percentage was used to calculate the assessment~~Request an audit be performed by an independent auditor or the state auditor unless an audit has been performed during the waiver period pursuant to the innovation wavier under section 1332 of the federal Patient Protection and Affordable Care Act [Pub. L. 111-148; 119 Stat. 124; 42 U.S.C. 1801 et seq.];
  - c. Approve bylaws and operating rules; and
  - d. Provide for other matters as may be necessary and proper for the execution of the commissioner's and board's powers, duties, and obligations.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 278

### SENATE BILL NO. 2295

(Senators Klein, Vedaa)  
(Representative Louser)

AN ACT to amend and reenact subsection 2 of section 24-02-01.1 and section 26.1-25-15 of the North Dakota Century Code, relating to the unsatisfied judgment fund and the assigned risk plan; to repeal chapter 26.1-23 of the North Dakota Century Code, relating to the unsatisfied judgment fund; and to provide for a transfer.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 24-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:

2. The motor vehicle department and the registrar of motor vehicles, including title 39, chapter 57-40.3, and ~~sections 26.1-23-03 and~~ section 26.1-41-02.

**SECTION 2. AMENDMENT.** Section 26.1-25-15 of the North Dakota Century Code is amended and reenacted as follows:

#### **26.1-25-15. Assigned risks.**

##### Agreements

1. An agreement may be made among insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods and the insurers may agree among themselves on the use of reasonable rate modifications for such insurance. ~~These agreements and rate modifications are~~ The agreement is subject to the approval of the commissioner.
2. The agreement approved in subsection 1 must be called the North Dakota automobile insurance plan. The plan may issue policies of insurance in the name of the plan for the applicants described in subsection 1, and to provide policyholder and claim-handling services.
3. A policy of insurance issued by the plan must be recognized as if issued by an insurance company authorized to issue insurance in this state. The policy also is considered proof of financial responsibility in accordance with title 39. This section does not revoke any exception granted in another section of law.
4. Every form and every modification, proposed to be used by the plan, of a policy, endorsement, rider, manual of classification, rule, rate, or rating plan, must be filed and approved by the commissioner before use.
5. An insurance company writing insurance in this state for private passenger motor vehicles, commercial motor vehicles, and other motor vehicles must be a subscriber to the plan.

6. The plan shall file an annual audited financial report with the commissioner promptly upon the completion of the report.
7. An applicant for a policy, any person insured under any a policy, and any insurance company affected may appeal to the commissioner from a ruling or decision of the plan. A person aggrieved by an order or act of the commissioner, within thirty days after receipt of written notice of the order or act, may file a petition in the district court of Burleigh County.
8. The plan may be managed and operated by one or more entities approved by the commissioner.
9. The commissioner may adopt rules to establish plan requirements and implement this section.

**SECTION 3. REPEAL.** Chapter 26.1-23 of the North Dakota Century Code is repealed.

**SECTION 4. TRANSFER - UNSATISFIED JUDGMENT FUND TO STATE HIGHWAY FUND.** The office of management and budget shall transfer any balance in the unsatisfied judgment fund on the effective date of this Act to the state highway fund.

Approved April 18, 2023

Filed April 19, 2023

## CHAPTER 279

### HOUSE BILL NO. 1094

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

AN ACT to create and enact section 26.1-02.1-02.2 of the North Dakota Century Code, relating to the prosecution of insurance fraud.

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

**SECTION 1.** Section 26.1-02.1-02.2 of the North Dakota Century Code is created and enacted as follows:

#### **26.1-02.1-02.2. Venue for filing criminal charges.**

If a person commits a fraudulent insurance act or any crime associated with a fraudulent insurance act, the venue for charging the crime may be any county in which the offense, any element of the offense, or payment related to the offense was perpetrated, received, produced, prepared, instigated, procured, promoted, or aided. If a person commits a fraudulent insurance act and commits additional crimes in the commission of a fraudulent insurance act or as part of a scheme associated with a fraudulent insurance act, venue need only be established for one offense. All offenses associated with a fraudulent insurance act may be charged in the same venue as established in one of the counts.

Approved March 22, 2023

Filed March 23, 2023

## CHAPTER 280

### HOUSE BILL NO. 1429

(Representatives Novak, Koppelman, Louser, J. Olson, S. Olson, Porter, M. Ruby,  
Thomas)  
(Senators Elkin, Magrum, Rummel)

AN ACT to create and enact a new subdivision to subsection 7 of section 26.1-04-03 and a new section to chapter 54-06 of the North Dakota Century Code, relating to unfair discrimination in the business of insurance and the investment and management of public funds; to amend and reenact section 21-10-08.1 and subsection 10 of section 54-44.4-02 of the North Dakota Century Code, relating to the prohibition on social investments and restrictions on perpetual contracts; and to provide for a legislative management report.

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

**SECTION 1. AMENDMENT.** Section 21-10-08.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **21-10-08.1. Social investment - Prohibition.**

1. As used in this section, "social investment" means the consideration of socially responsible criteria and environmental, social, and governance impact criteria in the investment or commitment of public funds for the purpose of obtaining an effect other than a maximized return at a prudent level of risk to the state.
2. Except as otherwise provided in a state investment policy relating to the investment of the legacy fund and unless the state investment board, or any other state entity investing public funds, can demonstrate a social investment would provide an equivalent or superior rate of return compared to a similar investment that is not a social investment and has a similar time horizon and risk, the state investment board, or other state entity, may not invest state funds for the purpose of social investment.

**SECTION 2.** A new subdivision to subsection 7 of section 26.1-04-03 of the North Dakota Century Code is created and enacted as follows:

Refusing to insure or charging a different rate solely in consideration of the risk's environmental, social, and governance criteria; diversity, equity, and inclusion policies; or political and ideological factors, unless the refusal or different rate is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience.

**SECTION 3.** A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

##### **Proxy voting.**

1. Proxy votes made on behalf of state funds or the funds of political subdivisions which receive investment management services from the state must be made in accordance with the requirements provided in section 21-10-08.1.
2. A state entity may not adopt a practice of following the recommendations of a proxy advisory firm or other service provider unless the proxy advisory firm's or the service provider's voting guidelines comply with the requirements of section 21-10-08.1.

<sup>161</sup> **SECTION 4. AMENDMENT.** Subsection 10 of section 54-44.4-02 of the North Dakota Century Code is amended and reenacted as follows:

10. Employee benefit services, trust-related services, and investment management services obtained by an agency with a fiduciary responsibility regarding those services. Nothing in this subsection may be construed to allow an agency to create or renew a contract perpetually and without limitation.

**SECTION 5. BANK OF NORTH DAKOTA STUDY - ENVIRONMENTAL, SOCIAL, AND GOVERNANCE TRENDS - REPORT TO LEGISLATIVE MANAGEMENT.**

1. During the 2023-24 interim, the Bank of North Dakota shall study environmental, social, and governance trends, laws, and policies that impact businesses and industries of this state. The study must include input from representatives from state government and industry with expertise in the areas of energy, agriculture, investment, insurance, economic development, finance, procurement, and contracting, and laws related to these areas.
2. The study must identify laws and regulations enacted by the federal government and other state governments related to environmental, social, and governance policies and trends which impact the state's energy and production agriculture industries. The study also must examine corporate environmental, social, and governance policies and trends impacting the state's energy and production agriculture industries, including finance, lending, insurance, and boycotts of energy or production agriculture commodities.
3. The study must identify a strategy to make the delivery of investment reports relating to state funds available and readily consumable to the public.
4. The study may identify industry-specific public policy strategies for immediate and long-term implementation to help the state continue to be a global leader in energy and agriculture. Strategies may include marketing and advocacy for state industries, exploration of emerging technology and practices, and examination of investment policy.
5. Before June 1, 2024, the Bank of North Dakota shall provide a report of its findings and recommendations to the legislative management, together with any legislation and appropriation requests required to implement the recommendations.

Approved April 26, 2023

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<sup>161</sup> Section 54-44.4-02 was also amended by section 3 of Senate Bill No. 2042, chapter 512.

Filed April 27, 2023

## CHAPTER 281

### HOUSE BILL NO. 1189

(Representatives Louser, Ista, Klemin, Roers Jones)  
(Senator Hogue)

AN ACT to amend and reenact sections 26.1-19-03 and 26.1-43-03 of the North Dakota Century Code, relating to legal expense insurance plans.

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

**SECTION 1. AMENDMENT.** Section 26.1-19-03 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-19-03. Exceptions.**

This chapter does not apply to:

1. Commercial insurers licensed or authorized to do business in this state or to any nonadmitted insurers.
2. Retainer contracts made by attorneys with individual clients with fees based upon an estimate of the nature and amount of services to be provided to a specific client and similar contracts made with a group of clients involved in the same or closely related legal matters.
3. Plans providing no benefits other than consultation with and advice by an attorney in connection or combination with referral services.
4. The furnishing of legal services on an informal basis, involving neither an express contractual obligation nor reasonable expectations, in the context of an employment, membership, educational, or similar relationship.
5. Employee welfare benefit plans as defined by the Employee Retirement Income Security Act of 1974 [Pub. L. 93-406; 88 Stat. 829].
6. Prepaid legal services plans that pay only an administrative fee to an attorney. Under this subsection, the payment of only an administrative fee to an attorney is not considered payment for or reimbursement of the cost of legal services and related expenses and court costs.

**SECTION 2. AMENDMENT.** Section 26.1-43-03 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-43-03. Legal plans and contracts excepted from insurance code.**

Unless otherwise provided, this title does not apply to:

1. Plans licensed under chapter 26.1-19.
2. Retainer contracts made by attorneys with individual clients with fees based upon an estimate of the nature and amount of services to be provided to a

specific client and similar contracts made with a group of clients involved in the same or closely related legal matters.

3. Employee welfare benefit plans as defined by the Employee Retirement Income Security Act of 1974 [Pub. L. 93-406; 88 Stat. 829].
4. Plans that do not include the assumption of risk or obligation to pay or reimburse for specified legal services or specified legal expenses. Under this subsection, the payment of only an administrative fee to an attorney is not considered reimbursement of the beneficiary or on behalf of the beneficiary for all or a portion of the beneficiary's fees, costs, or expenses related to or arising out of services by or under the supervision of an attorney licensed to practice law in this state.

Approved March 29, 2023

Filed March 30, 2023

## CHAPTER 282

### SENATE BILL NO. 2055

(Industry and Business Committee)  
(At the request of the Insurance Commissioner)

AN ACT to create and enact section 26.1-26-13.5 of the North Dakota Century Code, relating to the withdrawal of producer licensing applications; to amend and reenact sections 26.1-26-30, 26.1-26-33, subsection 1 of section 26.1-26-52, subdivision a of subsection 1 of section 26.1-26.8-06, subdivision a of subsection 2 of section 26.1-26.8-09, and subsections 7 and 8 of section 26.1-33.4-02 of the North Dakota Century Code, relating to the contents of producer licenses, producer notification of electronic mail address changes, automobile rental company staff soliciting insurance, and the renewal of public adjuster and life settlement licenses; and to repeal sections 26.1-26-37 and 26.1-26-46 of the North Dakota Century Code, relating to physical copies of a producer's license.

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

**SECTION 1.** Section 26.1-26-13.5 of the North Dakota Century Code is created and enacted as follows:

##### **26.1-26-13.5. Application deemed withdrawn.**

An application for a license under this chapter may be deemed withdrawn if the commissioner contacts an applicant in writing regarding an incomplete application and the commissioner does not receive a response from the applicant within twenty days of the date of the written communication. A withdrawn application under this section is not a refusal to issue a producer license and is not an administrative action. All fees accompanying the application for license are not refundable.

**SECTION 2. AMENDMENT.** Section 26.1-26-30 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-26-30. Contents of license.**

The license ~~shall~~must state the name, address, ~~social security number, personal identification number, or internal revenue service identification number~~ of the licensee, date of issue, and the line or lines of insurance covered by the license, and any other information the commissioner determines to be proper for inclusion in the license.

**SECTION 3. AMENDMENT.** Section 26.1-26-33 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-26-33. Notification of address change - Duty of licensee.**

Every licensee shall notify the commissioner of any change in the licensee's residential or business address, electronic mail address, or legal name within thirty days of the change. Notification may occur through the insurance producer database maintained by the national association of insurance producers, its affiliates, or subsidiaries. Any licensee who ceases to maintain residency in this state shall deliver

~~the insurance license to notify~~ the commissioner by personal delivery ~~or~~, by mail, or by electronic mail within thirty days after terminating residency.

**SECTION 4. AMENDMENT.** Subsection 1 of section 26.1-26-52 of the North Dakota Century Code is amended and reenacted as follows:

1. The automobile rental company is appropriately licensed in this state under subsection 24 of section 26.1-26-13.3 or is affiliated with an appropriately licensed North Dakota insurance producer.

**SECTION 5. AMENDMENT.** Subdivision a of subsection 1 of section 26.1-26.8-06 of the North Dakota Century Code is amended and reenacted as follows:

- a. Has paid the business entity licensing fee, not to exceed ~~one hundred fifty~~ dollars, prescribed by the commissioner; and

**SECTION 6. AMENDMENT.** Subdivision a of subsection 2 of section 26.1-26.8-09 of the North Dakota Century Code is amended and reenacted as follows:

- a. A business entity public adjuster license expires on the last day of the month following the two-year anniversary of issuance of a license by the commissioner.

<sup>162</sup> **SECTION 7. AMENDMENT.** Subsection 7 of section 26.1-33.4-02 of the North Dakota Century Code is amended and reenacted as follows:

7. Licenses may be renewed annually on ~~the anniversary date or before April thirtieth~~ 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. A license issued after January first is not required to renew until April thirtieth of the following calendar year. A license issued between May 1, 2023, and July 31, 2023, is not required to be renewed until April 30, 2025.

<sup>163</sup> **SECTION 8. AMENDMENT.** Subsection 8 of section 26.1-33.4-02 of the North Dakota Century Code is amended and reenacted as follows:

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 or before April thirtieth~~ 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. A license issued after January first is not required to be renewed until April thirtieth of the following calendar year. A license issued between May 1, 2023, and July 31, 2023, is not required to be renewed until April 30, 2025.

**SECTION 9. REPEAL.** Sections 26.1-26-37 and 26.1-26-46 of the North Dakota Century Code are repealed.

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<sup>162</sup> Section 26.1-33.4-02 was also amended by section 8 of Senate Bill No. 2055, chapter 282.

<sup>163</sup> Section 26.1-33.4-02 was also amended by section 7 of Senate Bill No. 2055, chapter 282.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 283

### SENATE BILL NO. 2135

(Senators Lee, Bekkedahl, Mathern)  
(Representatives Ista, Rohr, Satrom)

AN ACT to create and enact a new section to chapter 26.1-36 of the North Dakota Century Code, relating to assignment of dental insurance benefits; and to provide for application.

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

**SECTION 1.** A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

#### **Dental insurance - Assignment.**

An individual or group insurance policy covering dental services may not be issued or renewed unless the policy authorizes the insured or beneficiary to assign reimbursement for health or dental care services directly to the provider of services. Under this assignment, the insurer, if authorized by the insured or beneficiary, shall pay directly to the provider the amount of the claim under the same criteria and payment schedule as would have been reimbursed directly to the insured.

**SECTION 2. APPLICATION.** This Act applies to insurance policies issued or renewed on or after the effective date of this Act.

Approved April 6, 2023

Filed April 10, 2023

## CHAPTER 284

### HOUSE BILL NO. 1416

(Representatives Kiefert, K. Anderson, Rohr, M. Ruby, Tveit, Vigesaa, Weisz)  
(Senators Conley, Wobbema)

AN ACT to create and enact section 26.1-36-12.7 of the North Dakota Century Code, relating to freedom of choice for health care services; and to provide for application.

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

**SECTION 1.** Section 26.1-36-12.7 of the North Dakota Century Code is created and enacted as follows:

##### **26.1-36-12.7. Freedom of choice for health care services.**

1. As used in this section:
  - a. "Health benefit plan" has the same meaning as provided in section 26.1-36.3-01.
  - b. "Health care provider" includes an individual licensed under chapter 43-05, 43-06, 43-12.1 as a registered nurse or as an advanced practice registered nurse, 43-13, 43-15, 43-17, 43-26.1, 43-28, 43-32, 43-37, 43-40, 43-41, 43-42, 43-44, 43-45, 43-47, 43-58, or 43-60.
  - c. "Integrated delivery network" means a system of health care providers and facilities which offer both health care services and health benefit plans.
2. A health insurer, including the Medicaid program, which is part of an integrated delivery network may not obstruct patient choice by excluding a health care provider licensed under the laws of this state from participating on the health insurer's panel of providers if the provider is located within the geographic coverage area of the health benefit plan and is willing and fully qualified to meet the terms and conditions of participation, as established by the health insurer.

**SECTION 2. APPLICATION.** This Act applies to health benefit plans offered or sold on or after December 31, 2024.

Approved April 19, 2023

Filed April 20, 2023

## CHAPTER 285

### HOUSE BILL NO. 1095

(Representative Weisz)

AN ACT to create and enact chapter 26.1-36.11 of the North Dakota Century Code, relating to the inclusion of comprehensive medication management services in health benefit plans.

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

**SECTION 1.** Chapter 26.1-36.11 of the North Dakota Century Code is created and enacted as follows:

##### **26.1-36.11-01. Definitions.**

For the purposes of this chapter, unless the context otherwise requires:

1. a. "Comprehensive medication management" means medication management pursuant to a standard of care that ensures each enrollee's medications, both prescription and nonprescription, are individually assessed to determine each medication is appropriate for the enrollee, effective for the medical condition, and safe, given the comorbidities and other medications being taken and able to be taken by the enrollee as intended. Services provided in comprehensive medication management are, as follows:

- (1) Performing or obtaining necessary assessments of the enrollee's health status;
- (2) Formulating a medication treatment plan;
- (3) Monitoring and evaluating the enrollee's response to therapy, including safety and effectiveness;
- (4) Performing a comprehensive medication review to identify, resolve, and prevent medication-related problems, including adverse drug events;
- (5) Providing verbal or written, or both, counseling, education, and training designed to enhance enrollee understanding and appropriate use of the enrollee's medications;
- (6) Providing information, support services, and resources designed to enhance enrollee adherence with the enrollee's therapeutic regimens;
- (7) Coordinating and integrating medication therapy management services within the broader health care management services being provided to the enrollee;
- (8) Initiating or modifying drug therapy under a collaborative agreement with a practitioner in accordance with section 43-15-31.4;

- (9) Prescribing medications pursuant to protocols approved by the state board of pharmacy in accordance with subsection 24 of section 43-15-10;
  - (10) Administering medications in accordance with requirements in section 43-15-31.5; and
  - (11) Ordering, performing, and interpreting laboratory tests authorized by section 43-15-25.3 and North Dakota Administrative Code section 61-04-10-06.
- b. This subsection may not be construed to expand or modify pharmacist scope of practice.
2. "Enrollee" means an individual covered under a health benefit plan.
3. "Health benefit plan" has the same meaning as provided in section 26.1-36.3-01, whether offered on a group or individual basis.
4. "Health carrier" or "carrier" has the same meaning as provided in section 26.1-36.3-01.

**26.1-36.11-02. Required coverage for comprehensive medication management services.**

1. A health carrier shall provide coverage for licensed pharmacists to provide comprehensive medication management to eligible enrollees who elect to participate in a comprehensive medication management program.
2. At least annually, the health carrier shall provide, in print, or electronically under the provisions of section 26.1-02-32, notice of an enrollee's eligibility to receive comprehensive medication management services from a pharmacist, delivered to the eligible enrollee and the enrollee's designated primary care provider, if applicable, and if at least one of the following criteria are met:
- a. The enrollee is taking five or more chronic medications;
  - b. The enrollee was admitted to a hospital with one of the following diagnoses:
    - (1) Heart failure;
    - (2) Pneumonia;
    - (3) Myocardial infarction;
    - (4) Mood disorder; or
    - (5) Chronic obstructive pulmonary disorder; or
  - c. The enrollee has active diagnosis of comorbid diabetes and:
    - (1) Hypertension; or
    - (2) Hyperlipemia.

3. Comprehensive medication management services may be provided via telehealth as defined in section 26.1-36-09.15 and may be delivered into an enrollee's residence.
4. The health carrier shall include an adequate number of pharmacists in the carrier's network of participating pharmacy providers.
  - a. The participation of pharmacists and pharmacies in the health carrier network's or health carrier's affiliate network's drug benefit does not satisfy the requirement that health benefit plans include pharmacists in the health benefit plan's networks of participating pharmacy providers.
  - b. For health benefit plans issued or renewed after December 31, 2024, health carriers that delegate credentialing agreements to contracted health care facilities shall accept credentialing for pharmacists employed or contracted by those facilities. Health carriers shall reimburse facilities for covered services provided by network pharmacists within the pharmacists' scope of practice per negotiations with the facility.
5. The health carrier shall post electronically a current and accurate directory of pharmacists who are participating pharmacy providers and eligible to provide comprehensive medication management.
  - a. In making the directory available electronically, the health carrier shall ensure the general public is able to view all of the current providers for a plan through a clearly identifiable link or tab and without creating or accessing an account or entering a policy or contract.
  - b. The health carrier shall ensure that one hundred percent of provider directory entries are audited annually for accuracy and retain documentation of the audit to be made available to the commissioner upon request.
  - c. The health carrier shall provide a print copy of current electronic directory information upon request of an enrollee or a prospective enrollee.
  - d. The electronically posted directory must include search functionality that enables electronic searches by each of the following:
    - (1) Name;
    - (2) Participating location;
    - (3) Participating facility affiliations, if applicable;
    - (4) Languages spoken other than English, if applicable; and
    - (5) Whether accepting new enrollees.
6. The requirements of this section apply to all health benefit plans issued or renewed after December 31, 2024.

**26.1-36.11-03. Comprehensive medication management advisory committee.**

1. The commissioner shall establish and facilitate an advisory committee to implement the provisions of this chapter. The advisory committee shall

develop best practice recommendations for the implementation of comprehensive medication management and on standards to ensure pharmacists are adequately included and appropriately utilized in participating provider networks of health benefit plans. In developing these standards, the committee also shall discuss topics as they relate to implementation, including program quality measures, pharmacist training and credentialing, provider directories, care coordination, health benefit plan data reporting requirements, billing standards, and potential cost-savings and cost increases to consumers.

2. The commissioner or the commissioner's designee shall create an advisory committee, including representatives of the following stakeholders:
  - a. The commissioner or designee;
  - b. The state health officer or designee;
  - c. An organization representing pharmacists;
  - d. An organization representing physicians;
  - e. An organization representing hospitals;
  - f. A community pharmacy with pharmacists providing medical services;
  - g. The two largest health carriers in the state based upon enrollment;
  - h. The North Dakota state university school of pharmacy;
  - i. An employer as a health benefit plan sponsor;
  - j. An enrollee;
  - k. An organization representing advanced practice registered nurses; and
  - l. Other representatives appointed by the insurance commissioner.
3. No later than June 30, 2024, the advisory committee shall present initial best practice recommendations to the insurance commissioner and the department of health and human services. The commissioner or department of health and human services may adopt rules to implement the standards developed by the advisory committee. The advisory committee shall remain intact to assist the insurance commissioner or department of health and human services in rulemaking. Upon completion of the rulemaking process, the committee is dissolved.

#### **26.1-36.11-04. Rulemaking authority.**

The commissioner may adopt reasonable rules for the implementation and administration of the provisions of this chapter.

Approved April 7, 2023

Filed April 10, 2023

## CHAPTER 286

### HOUSE BILL NO. 1440

(Representatives D. Ruby, Kasper, Ostlie, Schobinger, Tveit, Vigesaa)  
(Senators Klein, Luick, Rust, Wobbema)

AN ACT to create and enact chapter 26.1-40.2 and a new section to chapter 39-34 of the North Dakota Century Code, relating to delivery network company insurance and classifying a transportation network company driver as an independent contractor; and to amend and reenact subsection 3 of section 26.1-40.1-01, section 26.1-40.1-03, subsection 1 of section 26.1-40.1-04, and sections 39-34-01, 39-34-02, 39-34-04, and 39-34-06 of the North Dakota Century Code, relating to transportation network company insurance and transportation and delivery company networks.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 26.1-40.1-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Engaged stage" means the time period from the moment a participating driver accepts a ride request on the transportation network company's online-enabled application or platform until the driver completes the transaction on the online-enabled application or platform or until the ride is complete, whichever is later passengers on-board stage begins.

**SECTION 2. AMENDMENT.** Section 26.1-40.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-40.1-03. Coverage insurance coverage required when transportation network company application is engaged until completion of ride when during the passenger has exited the vehicle on-board stage.**

4. A transportation network company and any participating driver shall maintain transportation network company insurance that provides for the following requirements that apply to transportation network company insurance during the engaged stage and during the passenger on-board stage.

- a. 1. Transportation network company liability insurance is primary and in the amount of one million dollars for death, bodily injury, and property damage. The requirements for the coverage required by this subdivisionsubsection may be satisfied by any of the following:

(1) a. Transportation network company insurance maintained by a participating driver.

(2) b. Transportation network company insurance maintained by a transportation network company.

(3) c. Any combination of paragraphs 1 and 2 subdivisions a and b.

- b-2. Transportation network company insurance coverage provided under this section for uninsured motorist coverage must meet the requirements under section 26.1-40-15.2, which is primary coverage.
- e-3. Transportation network company insurance coverage provided under this section for underinsured motorist coverage must meet the requirements under section 26.1-40-15.3, which is primary coverage.
- d-4. Transportation network company insurance coverage must provide primary personal injury protection to drivers, passengers, and pedestrians under chapter 26.1-41.
- e-5. The primary insurer, in the case of insurance coverage provided under ~~subdivision~~ subsection 1, has the sole duty to defend and indemnify the insured.
- f-6. Coverage under a transportation network company insurance policy may neither be dependent on a driver's personal automobile insurance policy carrier first denying a claim nor a personal automobile insurance policy carrier being required to first deny a claim.
- g-7. If transportation network company insurance maintained by a participating driver to fulfill the insurance obligations of this section has excluded coverage according to its policy or ceased to exist, the transportation network company shall provide the coverage required by this section beginning with the first dollar of a claim.

**SECTION 3. AMENDMENT.** Subsection 1 of section 26.1-40.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1. During the application on stage and during the engaged stage, the transportation network company insurance must include:
  - a. Motor vehicle liability coverage that is primary coverage. The coverage must include at least fifty thousand dollars per person and one hundred thousand dollars per incident for death and bodily injury and at least twenty-five thousand dollars for property damage.
  - b. Uninsured motorist coverage under section 26.1-40-15.2 which is primary coverage.
  - c. Underinsured motorist coverage under section 26.1-40-15.3 which is primary coverage.
  - d. Personal injury protection under chapter 26.1-41 which is primary coverage.

**SECTION 4.** Chapter 26.1-40.2 of the North Dakota Century Code is created and enacted as follows:

**26.1-40.2-01. Definitions.**

1. "Delivery available period" means the period when a driver:
  - a. Has logged on to a digital network and is available to receive requests to provide delivery services from a delivery network company.

- b. Is operating a personal vehicle; and
  - c. Is not providing delivery services or operating in the delivery service period.
2. "Delivery network company" means a corporation, partnership, sole proprietorship, or other entity that operates in the state and uses a digital network to connect a delivery network company customer to a delivery network driver to provide delivery services. A delivery network company may not be deemed to control, direct, or manage the personal vehicle or delivery network drivers that connect to the delivery network company's digital network, unless agreed to by written contract.
  3. "Delivery network company customer" means a person that orders the delivery of goods, where the delivery network driver delivers the goods at the direction of the delivery network company customer.
  4. "Delivery network driver" means an individual who provides delivery services through a delivery network company's digital network using a personal vehicle.
  5. "Delivery service period" means the period:
    - a. Beginning when a driver starts operating a personal vehicle en route to pick up a good for a delivery as documented via a digital network controlled by a delivery network company;
    - b. Continuing while the driver transports the requested delivery; and
    - c. Ending upon delivery of the requested good to:
      - (1) The delivery network company customer or the last delivery network company customer in a series of deliveries; or
      - (2) A location designated by the delivery network company, including for purposes of returning the good.
  6. "Delivery services" means the fulfillment of delivery requests made by a delivery network company customer through a digital network, including the pickup of any good and the delivery of the good to a delivery network company customer by a delivery network driver. Delivery services may include a series of deliveries to different customers.
  7. "Digital network" means any online-enabled application, software, website, or system offered or used by a delivery network company which enables deliveries with delivery network drivers.
  8. "Personal injury protection" means basic no-fault benefits as defined under section 26.1-41-01.
  9. "Personal vehicle" means a vehicle that is:
    - a. Used by a delivery network driver to provide delivery services via a digital network; or

- b. Owned, leased, or otherwise authorized for use by the delivery network driver.

#### **26.1-40.2-02. Required disclosures.**

A delivery network company shall disclose in writing or electronic form to a participating delivery network driver, as part of the delivery network company's agreement with the driver:

1. The insurance coverage, including the types of coverage and the limits for each coverage, the delivery network company provides while the driver uses a personal vehicle in connection with a delivery network company's digital network; and
2. That the driver's automobile insurance policy might not provide any coverage during the delivery available period, if it applies, or the delivery service period.

#### **26.1-40.2-03. Insurance requirements - Delivery network companies and delivery network company drivers.**

1. A delivery network company shall ensure that during the delivery available period, if it applies, and during the delivery service period, primary automobile liability insurance is in place which recognizes the driver is a delivery network driver or that does not exclude coverage for use of a personal vehicle to provide deliveries.
2. During the delivery service period and delivery available period, the delivery network driver, delivery network company, or any combination of the two shall maintain:
  - a. Insurance that insures the driver for liability to third parties of not less than fifty thousand dollars for damages arising out of bodily injury sustained by any one person in an accident, of not less than one hundred thousand dollars for damages arising out of bodily injury sustained by all persons injured in an accident, and of not less than twenty-five thousand dollars for all damages arising out of damage to or destruction of property in an accident;
  - b. Uninsured motorist coverage under section 26.1-40-15.2;
  - c. Underinsured motorist coverage under section 26.1-40-15.3; and
  - d. Personal injury protection under chapter 26.1-41.
3. If the insurance coverage maintained by a delivery network driver under subsections 1 and 2 has lapsed or does not provide the required coverage, insurance maintained by the delivery network company must provide the coverage required by subsections 1 and 2 beginning with the first dollar of a claim and the insurance maintained by the delivery network company has the duty to defend the claim.
4. Coverage under an automobile insurance policy maintained by the delivery network company may not be dependent on another motor vehicle liability insurer first denying a claim, or on another motor vehicle liability insurance policy being required to first deny a claim.

5. Insurance coverage required by this section may be obtained from an insurance company duly licensed to transact business under title 26.1 or by an eligible surplus lines broker.
6. During a claim coverage investigation, a delivery network company or a delivery network company's insurer shall cooperate with all insurers involved in the claim coverage investigation to facilitate the exchange of information and shall immediately provide upon request by directly involved parties or any insurer the precise times a delivery network driver began and ended the delivery available period and delivery service period on the delivery network company's digital network in the twelve-hour period immediately preceding the accident and in the twelve-hour period immediately following the accident. An insurer potentially providing the coverage required in this section shall disclose upon request by any other insurer involved in the particular claim, the applicable coverages, exclusions, and limits provided under any automobile insurance maintained to satisfy the requirements of this section.
7. The insurer of a delivery network company providing coverage under subsections 1 and 2 shall assume primary liability for a claim when a dispute exists as to when the delivery available period and the delivery service period began or ended and the delivery network company does not have available, did not retain, or fails to provide the information required by subsection 6.

#### **26.1-40.2-04. Exclusions in motor vehicle liability insurance policies.**

1. An authorized insurer that writes motor vehicle liability insurance in the state may exclude any and all coverage and the duty to defend or indemnify for any injury or loss occurring during the delivery available period and the delivery service period, including:
  - a. Liability coverage for bodily injury and property damage;
  - b. Personal injury protection coverage under chapter 26.1-41;
  - c. Uninsured and underinsured motorist coverage;
  - d. Medical payments coverage;
  - e. Comprehensive physical damage coverage; and
  - f. Collision physical damage coverage.
2. This chapter does not:
  - a. Invalidate or limit an exclusion contained in a motor vehicle liability insurance policy, including any insurance policy in use or approved for use which excludes coverage for motor vehicles used for delivery or for any business use.
  - b. Invalidate, limit, or restrict an insurer's ability to underwrite any insurance policy.
  - c. Invalidate, limit, or restrict an insurer's ability to cancel and nonrenew policies.

3. A motor vehicle liability insurer that defends or indemnifies a claim against a delivery network driver who is excluded under the terms of the insurer's policy may seek recovery against the insurer providing coverage under subsections 1 and 2 of section 26.1-40.2-03 if the claim:
  - a. Occurs during the delivery available period or the delivery service period; and
  - b. Is excluded under the terms of its policy.

#### **26.1-40.2-05. Proof of insurance.**

1. A delivery network driver shall carry proof of insurance required at all times while using a personal vehicle in connection with a digital network. If an accident occurs, a delivery network driver shall, upon request, provide insurance coverage information to a directly interested party, automobile insurer, and investigating law enforcement officer.
2. The insurance coverage information may be displayed or provided in either paper or electronic form. A delivery network driver shall, upon request, disclose to a directly interested party, automobile insurer, and investigating law enforcement officer whether the driver was operating during the delivery available period or the delivery service period at the time of the accident.

#### **26.1-40.2-06. Authorized or eligible carrier.**

Insurance coverage required by this chapter may be obtained from an insurance company licensed to transact business under title 26.1.

#### **26.1-40.2-07. Interaction with other law.**

This chapter does not limit the scope of federal or state law regarding delivery or transport of goods. A delivery made under this chapter which is subject to such other law also must comply with the requirements of that law. If there is a conflict between this chapter and another law dealing with the delivery or transport of goods, the other law prevails.

**SECTION 5. AMENDMENT.** Section 39-34-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-34-01. Agent.**

The transportation network company or delivery network company must maintain a registered agent with the secretary of state for service of process in this state.

**SECTION 6. AMENDMENT.** Section 39-34-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-34-02. Fare or fee charged for services.**

The transportation network company or delivery network company shall provide passengers or customers with the applicable rates being charged and the option to receive an estimated fare or fee before the passenger enters the transportation network company driver's vehicle or before the customer finalizes the delivery request.

**SECTION 7. AMENDMENT.** Section 39-34-04 of the North Dakota Century Code is amended and reenacted as follows:

**39-34-04. Personally identifiable information.**

A transportation network company or delivery network company may not disclose any personally identifiable information of a transportation network company passenger or delivery network company customer, except pursuant to the publicly disclosed terms of the transportation network company's or delivery network company's privacy policy. For any other disclosure not governed by the privacy policy, the transportation network company or delivery network company must obtain the passenger's consent before the company may disclose the passenger's or customer's personally identifiable information.

**SECTION 8. AMENDMENT.** Section 39-34-06 of the North Dakota Century Code is amended and reenacted as follows:

**39-34-06. Controlling authority.**

1. Notwithstanding any other provision of law, transportation network companies and transportation network company drivers are governed exclusively by this chapter, chapter 26.1-40.1, and any rules adopted consistent with this chapter and adopted by the insurance commissioner under chapter 26.1-40.1.
2. A political subdivision may not impose a tax on, or require a license for, a transportation network company ~~or a~~ transportation network company driver, delivery network company, or a delivery network company driver or subject a transportation network company or delivery network company to the political subdivision's rate, entry, operational, or other requirements.
3. This chapter may not be construed to limit the ability of a commercial service airport or the governing body of a commercial service airport to enter an operating agreement with a transportation network company which authorizes operational access to the commercial service airport. An operating agreement entered under this subsection may provide guidelines for entry, pick-up, drop-off, fees, and other airport operational procedures required by the commercial service airport for the transportation network company to be allowed operational access to the commercial service airport. As used in this subsection, "commercial service airport" means a public airport that has at least two thousand five hundred passenger boardings per calendar year and receives scheduled passenger aircraft service.

**SECTION 9.** A new section to chapter 39-34 of the North Dakota Century Code is created and enacted as follows:

**Delivery network driver - Independent contractor.**

1. As used in this chapter:
  - a. "Delivery network company" has the same meaning as provided under section 26.1-40.2-01.
  - b. "Delivery network driver" has the same meaning as provided under section 26.1-40.2-01.
2. A delivery network driver is an independent contractor and not an employee of a delivery network company if the delivery network company:

- a. Enters an agreement with the delivery network driver that the delivery network driver is an independent contractor and not an employee of the delivery network company;
  - b. Does not unilaterally prescribe specific hours during which the delivery network driver must be available to accept service requests submitted through the delivery network company's digital network;
  - c. Does not prohibit the delivery network driver from engaging in outside employment or performing services through other delivery network companies except while the delivery network driver is engaged in performing services through the delivery network company's digital network; and
3. A delivery network company may not terminate the contract of the delivery network company driver for a driver's refusal to accept a specific delivery request.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 287

### SENATE BILL NO. 2305

(Senators Klein, Burckhard, Vedaa)

AN ACT to create and enact section 26.1-44-03.3 of the North Dakota Century Code, relating to surplus lines insurance diligent search requirements; and to amend and reenact sections 26.1-44-02 and 26.1-44-08 of the North Dakota Century Code, relating to surplus lines insurance.

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

**SECTION 1. AMENDMENT.** Section 26.1-44-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **26.1-44-02. Duty to file evidence of insurance and signed statement.**

1. Each surplus lines producer, after the placing of any surplus lines insurance if the insured's home state is this state, shall execute and file a report of placement, no later than March first for the quarter ending the preceding December thirty-first, June first for the quarter ending the preceding March thirty-first, September first for the quarter ending the preceding June thirtieth, and December first for the quarter ending the preceding September thirtieth of each year, regarding the insurance which must be kept confidential by the commissioner. The report of placement must include:
  - a. The name and address of the insured;
  - b. The identity of the insurer or insurers;
  - c. The amount of premium charged for the insurance;
  - d. The amount of premium tax; and
  - e. Any other pertinent information as the commissioner may reasonably require; and
  - f. ~~A signed statement certifying under penalty of law in the form prescribed by the commissioner as to the diligent efforts to place the coverage with admitted insurers and the results of that effort. The signed diligent search statement must be open to public inspection. The signed diligent search statement must affirm that the insured was expressly advised in writing before placement of the insurance that:~~
    - (1) ~~The surplus lines insurer with which the insurance was to be placed is not licensed in this state and is not subject to the state's supervision; and~~
    - (2) ~~In the event of the insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty fund.~~

2. A surplus lines producer seeking to place nonadmitted insurance for an exempt commercial purchaser is not required to make a due diligence search or to file the signed diligent search statement in subdivision f of subsection 1 if the surplus lines producer has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight and the exempt commercial purchaser has subsequently requested in writing the surplus lines producer to procure or place such insurance from a nonadmitted insurer.

**SECTION 2.** Section 26.1-44-03.3 of the North Dakota Century Code is created and enacted as follows:

**26.1-44-03.3. Exemption from diligent search requirements.**

A licensed surplus line producer may procure a surplus line insurance contract from an eligible surplus lines insurer without making the required diligent search to procure the insurance from authorized insurers as specified under subsection 3 of section 26.1-44-03, if the risk was referred to the surplus line producer by an insurance producer licensed in this state.

**SECTION 3. AMENDMENT.** Section 26.1-44-08 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-44-08. Civil penalty for failure to file report of placement and signed statement, endorsement, audit, cancellation, file annual tax statement, and pay tax - Action for recovery - Revocation of license - Conditions prerequisite to reissuance - Hearing procedure and judicial review.**

1. A surplus lines producer is liable for a fine up to twenty-five dollars for each day of delinquency, not to exceed the sum of five hundred dollars for each failure or refusal to file, if the producer:
  - a. Fails or refuses to file the report of placement ~~or signed diligent search statement~~ as required under section 26.1-44-02;
  - b. Fails or refuses to file the endorsement, audit, or cancellation as required under section 26.1-44-06.1; or
  - c. Fails or refuses to make and file the annual tax statement or pay the tax no later than March first as required under section 26.1-44-06.1.
2. The tax and fine may be recovered in an action to be instituted by the commissioner in the name of the state, the attorney general representing the commissioner, in any court of competent jurisdiction, and the fine, when so collected, must be paid to the state treasurer and placed to the credit of the general fund. The commissioner, if satisfied that the delay in filing the annual tax statement, report of placement, endorsement, audit cancellation, ~~or signed diligent search statement~~ or the payment of the tax was excusable, may waive all or any part of the fine. The commissioner may revoke or suspend the surplus lines producer's license if any surplus lines producer fails to make and file the annual tax statement and pay the taxes, refuses to allow the commissioner to inspect and examine the producer's records of the business transacted by the producer pursuant to this chapter, ~~or fails to keep the records in the manner required by the commissioner, or falsifies or provides~~

~~false information in the signed diligent search statement referred to in section 26-1-44-02.~~

3. If the license of a surplus lines producer is revoked, whether by the action of the commissioner or by judicial proceedings, another license may not be issued to that surplus lines producer until two years have elapsed from the effective date of the revocation, nor until all taxes and fines are paid, nor until the commissioner is satisfied that full compliance with this chapter will be had.

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 288

### SENATE BILL NO. 2173

(Senators Klein, Burckhard, Larsen)  
(Representatives Kasper, Louser)

AN ACT to create and enact chapter 26.1-58 of the North Dakota Century Code, relating to the sale and regulation of travel insurance; and to amend and reenact section 26.1-26-54 of the North Dakota Century Code, relating to the licensing of limited lines travel insurance producers.

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

**SECTION 1. AMENDMENT.** Section 26.1-26-54 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-26-54. Insurance licenses for limited lines travel insurance producers.**

1. Travel insurance, as that term is defined in this section, is a limited line of insurance.
2. As used in this section:
  - a. "Limited lines travel insurance producer" means a:
    - (1) Licensed ~~managing general agent or~~ third-party administrator; ~~or~~
    - (2) Licensed insurance producer, including a limited lines producer, ~~designated by an insurer as the travel insurance supervising entity as set forth under subsection 9; or~~
    - (3) Travel administrator, as defined in section 26.1-58-02.
  - b. "Offer and disseminate" means to provide general information, including a description of the coverage and price, as well as to process the application, collect premiums, and perform other nonlicensable activities permitted by the state.
  - c. "Travel insurance" means insurance coverage for personal risks incident to planned travel, including interruption or cancellation of a trip or event; ~~;~~ loss of baggage or personal effects; ~~;~~ damages to accommodations or rental vehicles; ~~or~~; sickness, accident, disability, or death occurring during travel; emergency evacuation; repatriation of remains; or any other contractual obligations to indemnify or pay a specified amount to the traveler upon determinable contingencies related to travel as approved by the commissioner. The term does not include a major medical plan that provides comprehensive medical protection for an individual on a trip lasting at least six months, including an individual working or residing overseas as an expatriate, or any other product that requires a specific insurance producer license.

- d. "Travel retailer" means a business entity that makes, arranges, or offers travel services and which may offer and disseminate travel insurance as a service to customers on behalf of and under the direction of a limited lines travel insurance producer.
3. Notwithstanding any other provision of law:
- a. The commissioner may issue a limited lines travel insurance producer license to an individual or business entity that files an application with the commissioner in a form and manner prescribed by the commissioner. A licensed limited lines travel insurance producer may sell, solicit, or negotiate travel insurance through a licensed insurer. A person may not act as a limited lines travel insurance producer or travel insurance retailer unless properly licensed or registered.
- b. A travel retailer may offer and disseminate travel insurance, ~~if~~ under a limited lines travel insurance producer business entity license only if the following conditions are met:
- (1) ~~The limited lines travel insurance producer or travel retailer provide~~provides to purchasers of travel insurance:
- (a) ~~The~~A description of the material terms or the actual material terms of the insurance coverage;
- (b) A description of the claim filing process;
- (c) A description of the policy review or cancellation process for the travel insurance policy; and
- (d) The identity and contact information of the insurer and limited lines producer.
- (2) At the time of licensure, the limited lines travel insurance producer establishes and maintains a register of each travel retailer that offers insurance on the behalf of the producer. The register must be on a form prescribed by the commissioner. Annually, the register must be updated by the limited lines travel insurance producer. The register must include the name, address, and contact information of the travel retailer and a person that controls the travel retailer's operations. The register must include the travel retailer's federal tax identification number. Upon request, the limited lines travel insurance producer shall submit the register to the insurance department. The limited lines producer shall certify that the travel retailer registered complies with the Violent Crime and Law Enforcement Act of 1994 [Pub. L. 103-322; 108 Stat. 1796; 18 U.S.C. 1033 et seq.]. The grounds for the suspension, revocation, and penalties applicable to resident insurance producers under this chapter, must be applicable to limited lines travel insurance producers and travel retailers.
- (3) The limited lines travel insurance producer designates one of the producer's licensed insurance employees as the individual responsible for the compliance with the state's travel insurance laws, rules, and regulations.

- (4) The designated employee, president, secretary, treasurer, or any other individual who controls the producer's insurance operations complies with the fingerprinting requirements applicable to insurance producers in the resident state of the limited lines travel insurance producer.
  - (5) The limited lines travel insurance producer pays all applicable licensing fees as set forth in state law.
  - (6) The limited lines travel insurance producer requires each employee and authorized representative of the travel retailer, who offer and disseminate travel insurance, to receive training. ~~The commissioner may review the training procedures, which is subject, at the discretion of the commissioner, to review and approval.~~ The training material must contain instructions on the type of insurance offered, ethical sales practices, and required disclosures to prospective customers, ~~and upon request must be provided to the commissioner for inspection.~~
- ~~4. The limited lines travel insurance producer and any travel retailer and the travel retailer's employees offering and disseminating travel insurance under the limited lines travel insurance producer license shall be subject to the provisions of chapters 26.1-04 and 26.1-26.~~
  - ~~5. The travel retailer and its employees act on behalf of the limited lines producer and the producer is responsible for any representations made by the employees of the travel retailer relating to insurance products offered or disseminated through the travel retailer.~~
  6. If the insurance commissioner determines that a travel retailer, or a travel retailer's employee has violated any provision of this chapter or any other provision of this title, the commissioner may:
    - a. Direct the limited lines travel insurance producer to implement a corrective action plan with the travel retailer; or
    - b. Revoke the authorization of the travel retailer to transact travel insurance on behalf of the limited lines travel insurance producer under its license and direct the limited lines travel insurance producer to remove the travel retailer's name from its register.
- ~~7.5.~~ If the insurance commissioner determines that a travel retailer, or a travel retailer's employee, has violated any provision in this chapter or any other provision of this title, the commissioner may:
- a. Suspend or revoke the license of the limited lines travel insurance producer;
  - b. Issue a cease and desist order against the license of the limited lines travel insurance producer; and
  - c. Impose a monetary fine on the limited lines travel insurance producer.
- ~~8.6.~~ Limited lines travel insurance producers, and those registered under the producer's license, are exempt from continuing education requirements.

- 9-7. A travel retailer shall make brochures or other written materials that have been approved by the travel insurer available to prospective purchasers which, The materials must include information that, at a minimum:
- Provide~~Provides~~ the identity and contact information of the insurer and the limited lines travel insurance producer;
  - Explain~~Explains the~~ purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer; and
  - Explain~~Explains~~ an unlicensed travel retailer may provide only general information about the insurance offered by the travel retailer, including a description of the coverage and price. An unlicensed travel retailer may not~~is not qualified or authorized to~~ answer technical questions about the terms and conditions of the insurance offered by the travel retailer or evaluate the adequacy of existing insurance coverage.
- ~~40-8.~~ An unlicensed employee or authorized representative of a travel retailer may not:
- Evaluate or interpret the technical terms, benefits, or conditions of the offered travel insurance coverage;
  - Evaluate or advise a prospective purchaser regarding existing insurance coverage;
  - Be held out as a licensed insurer, licensed producer, or insurance expert; or
  - Be directly paid a commission or any other compensation by an insurer for the sale of insurance, except in accordance with this chapter and chapter 26.1-58.
- ~~41-9.~~ Notwithstanding any other provision of law, a travel retailer ~~who is in compliance with all requirements of this section may receive fair compensation for offering and disseminating travel insurance whose insurance-related activities, and those of the travel retailer's employees and authorized representatives, are limited to offering and disseminating travel insurance on behalf of and under the direction of a limited lines travel insurance producer meeting the conditions in this section, is authorized to receive related compensation, upon registration by the limited lines travel insurance producer as described in paragraph 2 of subdivision b of subsection 3.~~
- ~~42-10.~~ Travel insurance may be provided under an individual policy or under a group or ~~master~~blanket policy.
- ~~43-11.~~ The limited lines travel insurance producer is responsible for the acts of the travel retailer. The limited lines travel insurance producer shall ensure the travel retailer complies with this chapter and chapter 26.1-58.
12. A person licensed in a major line of authority as an insurance producer is authorized to sell, solicit, and negotiate travel insurance. A property and casualty insurance producer is not required to become appointed by an insurer in order to sell, solicit, or negotiate travel insurance.

**SECTION 2.** Chapter 26.1-58 of the North Dakota Century Code is created and enacted as follows:

**26.1-58-01. Scope.**

1. This chapter applies to travel insurance that covers any resident of this state, and is sold, solicited, negotiated, or offered in this state, and policies and certificates delivered or issued for delivery in this state. This chapter does not apply to cancellation fee waivers or travel assistance services, except as expressly provided in this chapter.
2. All other applicable provisions of this state's insurance laws continue to apply to travel insurance, except the specific provisions of this chapter supersede any general provisions of law that otherwise would be applicable to travel insurance.

**26.1-58-02. Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. "Aggregator site" means a website that provides access to information regarding insurance products from more than one insurer, including product and insurer information, for use in comparison shopping.
2. "Blanket travel insurance" means a policy of travel insurance issued to an eligible group providing coverage for specific classes of persons defined in the policy with coverage provided to all members of the eligible group without a separate charge to individual members of the eligible group.
3. "Cancellation fee waiver" means a contractual agreement between a supplier of travel services and the supplier's customer to waive some or all of the nonrefundable cancellation fee provisions of the supplier's underlying travel contract with or without regard to the reason for the cancellation or form of reimbursement. A cancellation fee waiver is not insurance.
4. "Eligible group", solely for purposes of travel insurance, means two or more persons that are engaged in a common enterprise, or have an economic, educational, or social affinity or relationship, including any of the following:
  - a. An entity engaged in the business of providing travel or travel services, including tour operators, lodging providers, vacation property owners, hotels and resorts, travel clubs, travel agencies, property managers, cultural exchange programs, and common carriers or the operator, owner, or lessor of a means of transportation of passengers, including airlines, cruise lines, railroads, steamship companies, and public bus carriers, under which with regard to any particular travel or type of travel or travelers, all members or customers of the group must have a common exposure to risk attendant to the travel;
  - b. A college, school, or other institution of learning, covering students, teachers, employees, or volunteers;
  - c. An employer covering any group of employees, volunteers, contractors, board of directors, dependents, or guests;

- d. A sports team, camp, or sponsor of a sports team or camp, covering participants, members, campers, employees, officials, supervisors, or volunteers;
  - e. A religious, charitable, recreational, educational, or civic organization, or branch thereof, covering any group of members, participants, or volunteers;
  - f. A financial institution or financial institution vendor; parent holding company, trustee, or agent of the financial institution or vendor; or parent holding company, trustee, or agent designated by one or more financial institutions or financial institution vendors, including accountholders, credit card holders, debtors, guarantors, or purchasers;
  - g. An incorporated or unincorporated association, including labor unions, having a common interest, constitution, and bylaws, and organized and maintained in good faith for purposes other than obtaining insurance for members or participants of the association covering the association's members;
  - h. A trust or the trustees of a fund established, created, or maintained for the benefit of and covering members, employees, or customers, subject to the commissioner permitting the use of a trust and the state premium tax in section 26.1-58-03 of one or more associations meeting the requirements of subdivision g;
  - i. An entertainment production company covering a group of participants, volunteers, audience members, contestants, or workers;
  - j. A volunteer fire department, ambulance, rescue, police, court, or first aid, civil defense, or other such volunteer group;
  - k. Preschools, day care institutions for children or adults, and senior citizen clubs;
  - l. An automobile or truck rental or leasing company covering a group of individuals who may become renters, lessees, or passengers defined by the individuals' travel status on the rented or leased vehicles. The common carrier, the operator, owner, or lessor of a means of transportation, or the automobile or truck rental or leasing company, is the policyholder under a policy to which this section applies; or
  - m. Any other group for which the commissioner has determined the members are engaged in a common enterprise, or have an economic, educational, or social affinity or relationship, and issuance of the policy would not be contrary to the public interest.
5. "Fulfillment materials" means documentation sent to the purchaser of a travel protection plan confirming the purchase and providing the travel protection plan's coverage and assistance details.
6. "Group travel insurance" means travel insurance issued to an eligible group.
7. "Limited lines travel insurance producer" has the same meaning as provided in section 26.1-26-54.

8. "Offer and disseminate" has the same meaning as provided in section 26.1-26-54.
9. "Primary certificate holder", specific to section 26.1-58-03, means an individual who elects and purchases travel insurance under a group policy.
10. "Primary policyholder", specific to section 26.1-58-03, means an individual who elects and purchases individual travel insurance.
11. "Travel administrator" means a person that directly or indirectly underwrites, collects charges, collateral, or premiums from, or adjusts or settles claims on residents of this state, in connection with travel insurance, except a person is not considered a travel administrator if that person's only actions that would otherwise cause the person to be considered a travel administrator are among the following:
  - a. A person working for a travel administrator to the extent the person's activities are subject to the supervision and control of the travel administrator;
  - b. An insurance producer selling insurance or engaged in administrative and claims-related activities within the scope of the producer's license;
  - c. A travel retailer offering and disseminating travel insurance and registered under the license of a limited lines travel insurance producer in accordance with this chapter;
  - d. An individual adjusting or settling claims in the normal course of that individual's practice or employment as an attorney-at-law and who does not collect charges or premiums in connection with insurance coverage; or
  - e. A business entity affiliated with a licensed insurer while acting as a travel administrator for the direct and assumed insurance business of an affiliated insurer.
12. "Travel assistance services" means noninsurance services for which the consumer is not indemnified based on a fortuitous event, and for which providing the service does not result in transfer or shifting of risk that would constitute the business of insurance. The term includes security advisories, destination information, vaccination and immunization information services, travel reservation services, entertainment, activity and event planning, translation assistance, emergency messaging, international legal and medical referrals, medical case monitoring, coordination of transportation arrangements, emergency cash transfer assistance, medical prescription replacement assistance, passport and travel document replacement assistance, lost luggage assistance, concierge services, and any other service furnished in connection with planned travel. Travel assistance services are not insurance.
13. "Travel insurance" has the same definition as provided in section 26.1-26-54.
14. "Travel protection plan" means a plan that provides one or more of the following:
  - a. Travel insurance.

- b. Travel assistance services.
  - c. Cancellation fee waivers.
15. "Travel retailer" has the same definition as provided in section 26.1-26-54.

#### **26.1-58-03. Travel protection plans.**

Travel protection plans may be offered for one price for the combined features the travel protection plan offers in this state if:

1. The travel protection plan clearly discloses to the consumer, at or before the time of purchase, that the plan includes travel insurance, travel assistance services, and cancellation fee waivers as applicable, and provides information and an opportunity, at or before the time of purchase, for the consumer to obtain additional information regarding the features and pricing of each; and
2. The fulfillment materials:
  - a. Describe and delineate the travel insurance, travel assistance services, and cancellation fee waivers in the travel protection plan; and
  - b. Include the travel insurance disclosures and the contact information for persons providing travel assistance services, and cancellation fee waivers, as applicable.

#### **26.1-58-04. Sales practices.**

1. A person offering travel insurance to residents of this state is subject to chapter 26.1-04, except as otherwise provided in this section. In the event of a conflict between this chapter and other provisions of title 26.1 regarding the sale and marketing of travel insurance and travel protection plans, the provisions of this chapter control.
2. Offering or selling a travel insurance policy that could never result in payment of any claims for any insured under the policy is an unfair trade practice under chapter 26.1-04.
3.
  - a. All documents provided to consumers before the purchase of travel insurance, including sales materials, advertising materials, and marketing materials, must be consistent with the travel insurance policy itself, including forms, endorsements, policies, rate filings, and certificates of insurance.
  - b. For travel insurance policies or certificates that contain pre-existing condition exclusions, information and an opportunity to learn more about the pre-existing condition exclusions must be provided any time before the time of purchase, and in the coverage's fulfillment materials.
  - c. The fulfillment materials and the information described in paragraph 1 of subdivision b of subsection 3 of section 26.1-26-54 must be provided to a policyholder or certificate holder as soon as practicable following the purchase of a travel protection plan. Unless the insured has either started a covered trip or filed a claim under the travel insurance coverage, a policyholder or certificate holder may cancel a policy or certificate for a full refund of the travel protection plan price from the date of purchase of a

travel protection plan until at least fifteen days following the date of delivery of the travel protection plan's fulfillment materials by postal mail, or ten days following the date of delivery of the travel protection plan's fulfillment materials by means other than postal mail. For purposes of this section, "delivery" means handing fulfillment materials to the policyholder or certificate holder or sending fulfillment materials by postal mail or electronic means to the policyholder or certificate holder.

- d. The company shall disclose in the policy documentation and fulfillment materials whether the travel insurance is primary or secondary to other applicable coverage.
- e. Where travel insurance is marketed directly to a consumer through an insurer's website or by others through an aggregator site, it is not an unfair trade practice or other violation of law if an accurate summary or short description of coverage is provided on the web page, so long as the consumer has access to the full provisions of the policy through electronic means.
4. It is an unfair trade practice to market blanket travel insurance coverage as free.
5. Where a consumer's destination jurisdiction requires insurance coverage, it is not an unfair trade practice to require that a consumer choose between the following options as a condition of purchasing a trip or travel package:
  - a. Purchasing the coverage required by the destination jurisdiction through the travel retailer or limited lines travel insurance producer supplying the trip or travel package; or
  - b. Agreeing to obtain and provide proof of coverage that meets the destination jurisdiction's requirements before departure.

#### **26.1-58-05. Travel administrators.**

1. Notwithstanding any other provisions of title 26.1, a person may not act or represent itself as a travel administrator for travel insurance in this state unless that person:
  - a. Is a licensed property and casualty insurance producer in this state for activities permitted under that producer license; or
  - b. Holds a valid third-party administrator license in this state.
2. An insurer is responsible for the acts of a travel administrator administering travel insurance underwritten by the insurer, and is responsible for ensuring the travel administrator maintains all books and records relevant to the insurer to be made available by the travel administrator to the commissioner upon request.

#### **26.1-58-06. Policy.**

1. Notwithstanding any other provision of title 26.1, travel insurance must be classified and filed for purposes of rates and forms under an inland marine line of insurance.

2. Eligibility and underwriting standards for travel insurance may be developed and provided based on travel protection plans designed for individual or identified marketing or distribution channels, provided those standards also meet the state's underwriting standards for inland marine.

**26.1-58-07. Rules.**

The commissioner may adopt rules to implement this chapter.

Approved March 27, 2023

Filed March 28, 2023

# JUDICIAL BRANCH OF GOVERNMENT

## CHAPTER 289

### SENATE BILL NO. 2345

(Senators Hogan, Lee)

AN ACT to create and enact a new chapter to title 27 of the North Dakota Century Code, relating to the task force on guardianship monitoring to promote the accountability of all guardians; to amend and reenact subsection 4 of section 43-41-09 of the North Dakota Century Code, relating to the licensure of social workers; and to provide an appropriation.

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

**SECTION 1.** A new chapter to title 27 of the North Dakota Century Code is created and enacted as follows:

##### **Task force on guardianship monitoring.**

1. The North Dakota supreme court shall establish a task force on guardianship monitoring to address matters of guardianship accountability and further protections of individuals under guardianship. The task force on guardianship monitoring must include representatives from the guardianship monitoring program and protection and advocacy project and individuals representing guardianship service providers, family guardians, district court judges, and attorneys.
2. The task force shall recommend the regulations necessary to enhance the guardianship monitoring program to investigate suspected guardian mismanagement or illegal behavior. The regulations must include:
  - a. Appropriate certification, training, and background requirements for the guardian investigator position relating to specialized training in guardianship services, financial management, investigations involving allegations of neglect, abuse, and exploitation of vulnerable adults, and training with the national guardianship association's guardianship and conservator auditor and monitor investigator program;
  - b. Procedures for investigating referrals from a judicial officer, the division of the department of health and human services that oversees vulnerable adult services, protection and advocacy, social workers, the ombudsman program, the Medicaid fraud control unit, and any entity that oversees or provides services for vulnerable adults;
  - c. Procedures relating to the investigation of a single guardian or an entire guardianship service provider managed by a guardianship investigator; and

- d. Any findings, recommendations, or improvements issued to the district court for review.
3. The task force on guardianship monitoring shall make the recommendations under subsection 2 to the supreme court. Upon receiving the recommendations, the supreme court may adopt rules implementing the recommendations.

**SECTION 2. AMENDMENT.** Subsection 4 of section 43-41-09 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~Approve examinations for licensing~~License social workers. The board may:
  - a. Suspend the use of an examination for licensure.
  - b. Waive examination requirements and create a process under which an applicant may apply for a waiver to licensure examination requirements.
  - c. Create alternative requirements that do not require an examination to ascertain the qualifications and fitness of a candidate for a license to engage in the practice of social work.

**SECTION 3. APPROPRIATION - JUDICIAL BRANCH - FULL-TIME EQUIVALENT POSITION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$290,000, or so much of the sum as may be necessary, to the judicial branch for the purpose of administering the guardianship monitoring program, for the biennium beginning July 1, 2023, and ending June 30, 2025. The judicial branch is authorized a full-time equivalent position to administer the guardianship monitoring program.

Approved April 29, 2023

Filed May 1, 2023

## CHAPTER 290

### SENATE BILL NO. 2045

(Judiciary Committee)  
(At the request of the Supreme Court)

AN ACT to amend and reenact sections 27-02.1-01, 27-02.1-02, 27-02.1-03, 27-02.1-04, 27-02.1-05, 27-02.1-06, 27-02.1-07, 27-02.1-08, and 27-02.1-09 of the North Dakota Century Code, relating to the temporary court of appeals; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 27-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-01. Temporary court of appeals established - Jurisdiction - Writ authority - Administration. (Effective through January 1, ~~2024~~2034)**

A temporary court of appeals is established to exercise appellate and original jurisdiction as delegated by the supreme court. Panels of the temporary court of appeals may issue original and remedial writs necessary to properly exercise jurisdiction in cases assigned to them. The panels of the temporary court of appeals are subject to administration by the supreme court pursuant to sections 3 and 8 of article VI of the Constitution of North Dakota.

**SECTION 2. AMENDMENT.** Section 27-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-02. Number, assignment, and compensation of judges. (Effective through January 1, ~~2024~~2034)**

1. The supreme court may provide for the assignment of active or retired district court judges, retired justices of the supreme court, and lawyers, to serve on three-judge panels of the temporary court of appeals if the chief justice certifies to the governor that the supreme court has disposed of two hundred fifty cases in the twelve months preceding September first of any year. Assignments may be made for a time certain, not to exceed one year from the date of assignment, or specifically for one or more cases on the docket of the supreme court.
2. An active or retired district court judge serving on the temporary court of appeals may not be assigned to hear cases in which the judge participated while serving on the district court. An active district court judge may not be assigned to hear cases that originated in the judicial district of the judge.
3. An active district court judge serving on the temporary court of appeals is not entitled to additional compensation, but is entitled to reimbursement for expenses as provided by sections 44-08-04 and 54-06-09.
4. Retired justices of the supreme court, retired district court judges, and lawyers serving as judges on panels of the temporary court of appeals are entitled to

receive as compensation for each day of service in the performance of duties pursuant to the assignment an amount equal to five percent of the gross monthly salary as provided for a regularly elected or appointed justice of the supreme court, or one-half of the daily compensation for services of one-half day or less. The compensation must be paid upon certification by the judge that the services were performed for the number of days shown on the certificate and must be paid in the same manner as the salaries of the regularly elected or appointed judges are paid.

**SECTION 3. AMENDMENT.** Section 27-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-03. Assignment and reassignment of cases - Quorum for decision of cases - Authority in furtherance of jurisdiction. (Effective through January 1, 20242034)**

1. Panels of the temporary court of appeals have jurisdiction to hear and to decide all cases assigned by the supreme court.
2. The supreme court may order reassignment of any case from a panel of the temporary court of appeals to the supreme court.
3. A majority of the three judges of a panel of the temporary court of appeals hearing a case is necessary to pronounce a decision.
4. When a judgment or order is reversed, modified, or confirmed by a panel of the temporary court of appeals, the reasons must be concisely stated in writing, signed by the judges concurring, filed in the office of the clerk of the supreme court, and preserved with the record of the case. Any judge concurring or dissenting may give the reasons for the judge's concurrence or dissent in writing over the judge's signature.

**SECTION 4. AMENDMENT.** Section 27-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-04. Administration - Employees and clerical assistance - Court of record - Place of sessions. (Effective through January 1, 20242034)**

1. The clerk of the supreme court shall provide clerk services to panels of the temporary court of appeals.
2. Panels of the temporary court of appeals may hold court in any place the panel considers convenient and efficient for conducting its business.
3. All proceedings of the panels of the temporary court of appeals must be pursuant to the rules adopted by the supreme court.

**SECTION 5. AMENDMENT.** Section 27-02.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-05. Chief judge. (Effective through January 1, 20242034)**

The chief justice of the supreme court shall designate a chief judge of each panel of the temporary court of appeals who shall preside pursuant to rules of the supreme court.

**SECTION 6. AMENDMENT.** Section 27-02.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-06. Review of decisions of panels. (Effective through January 1, 20242034)**

Any party in interest who is aggrieved by a judgment or order of a panel of the temporary court of appeals may petition the supreme court for review of the judgment or order pursuant to rules of the supreme court. Upon the filing of a petition for review by the supreme court, the order or judgment and mandate of the panel of the temporary court of appeals is stayed pending action of the supreme court. The supreme court has discretion to grant or deny the petition.

**SECTION 7. AMENDMENT.** Section 27-02.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-07. Right to appeal not created. (Effective through January 1, 20242034)**

This chapter does not provide or create a right of appeal if that right is not otherwise provided by law. An appeal assigned to a panel of the temporary court of appeals fulfills the right of appeal provided by section 28-27-02.

**SECTION 8. AMENDMENT.** Section 27-02.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-08. Unitary appeal - Filing of appeal - Filing fee. (Effective through January 1, 20242034)**

All appeals must be treated as one appeal process under the jurisdiction of the supreme court. In any appeal there may be only one filing and one filing fee required. The filing fee is as prescribed by section 27-03-05.

**SECTION 9. AMENDMENT.** Section 27-02.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**27-02.1-09. Publication of opinions. (Effective through January 1, 20242034)**

Opinions of the panels of the temporary court of appeals may be published pursuant to rules of the supreme court.

Approved March 20, 2023

Filed March 21, 2023

## CHAPTER 291

### SENATE BILL NO. 2267

(Senators Bekkedahl, Hogue, Larson)  
(Representatives Ista, Klemin, Roers Jones)

AN ACT to amend and reenact section 27-02.2-04 of the North Dakota Century Code, relating to the number of attorneys that may participate in the rural attorney recruit program.

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

**SECTION 1. AMENDMENT.** Section 27-02.2-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **27-02.2-04. Attorney eligibility.**

An attorney licensed to practice in the state who meets all requirements set by the supreme court may participate in the recruitment assistance program. An attorney participating in the program shall practice in a supreme court-selected county or municipality for at least five consecutive years. No more than ~~four~~eight attorneys may participate in the program at any given time.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 292

### HOUSE BILL NO. 1058

(Judiciary Committee)  
(At the request of the Supreme Court)

AN ACT to amend and reenact section 27-08.1-04 of the North Dakota Century Code, relating to small claims.

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

**SECTION 1. AMENDMENT.** Section 27-08.1-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **27-08.1-04. Election to proceed in small claims court irrevocable.**

Election by the plaintiff to use the procedures provided for in this chapter is irrevocable. In the event the plaintiff elects to discontinue the proceedings, the court shall enter its order accordingly, and unless otherwise provided in the order the dismissal must be deemed to be with prejudice. By election to proceed in small claims court, the plaintiff waives the right to appeal to any other court from the decision of the small claims court. The defendant waives the right to appeal from the decision of the small claims court upon receiving the order for appearance as required herein, unless the defendant elects to remove the action from the small claims court to district court. If the defendant elects to remove the action to district court, the defendant must serve upon the plaintiff a notice of the removal and file with the clerk of the court to which the action is removed a copy of the claim affidavit and the defendant's answer along with the filing fee, except for an answer fee, required for civil actions. If the defendant elects to remove the action from small claims court to district court, the district court shall award attorney's fees to a prevailing plaintiff. If the defendant appeals a district court judgment to the supreme court, the supreme court shall award reasonable attorney's fees to the prevailing appellee.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 293

### HOUSE BILL NO. 1536

(Representatives Davis, Conmy, Finley-DeVille, Hager, Henderson, Klemin, Pyle,  
Rohr, Weisz)  
(Senator Luick)

AN ACT to create and enact chapter 27-19.1 of the North Dakota Century Code, relating to Indian child welfare; to amend and reenact section 27-20.3-18 of the North Dakota Century Code, relating to reasonable efforts to prevent removal; to repeal section 27-20.3-19 of the North Dakota Century Code, relating to Indian child welfare; and to provide for a legislative management study.

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

**SECTION 1.** Chapter 27-19.1 of the North Dakota Century Code is created and enacted as follows:

##### **27-19.1-01. Active efforts and procedures - Definitions.**

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

- a. "Active efforts" means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with the Indian child's family. If an agency is involved in the child custody proceeding, active efforts must involve assisting the parent or a parent or Indian custodian with the steps of a case plan and including accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and tribe. Active efforts are to be tailored to the facts and circumstances of the case. The term includes:
- (1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal, with ongoing timely assessment to determine when the threat is resolved and placement of the Indian child can be returned to the custodian.
  - (2) Identifying appropriate services and helping a parent or Indian custodian to overcome barriers, including actively assisting a parent or Indian custodian in obtaining such services.
  - (3) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues.
  - (4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with

extended family members to provide family structure and support for the Indian child and the Indian child's parent or Indian custodian.

- (5) Offering and employing available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the Indian child's tribe.
  - (6) Taking steps to keep siblings together, if possible.
  - (7) Supporting regular visits with a parent or Indian custodian in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the Indian child.
  - (8) Identifying community resources, including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parent or Indian custodian or, as appropriate, the Indian child's family, in utilizing and accessing those resources.
  - (9) Monitoring progress and participation in services.
  - (10) Considering alternative ways to address the needs of the Indian child's parent or Indian custodian and where appropriate, the family, if the optimum services do not exist or are not available.
  - (11) Providing post-reunification services and monitoring.
- b. "Adoptive placement" means the permanent placement of an Indian child for adoption.
  - c. "Extended family member" means a relationship defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, means an individual who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.
  - d. "Foster care or nonfoster care placement" means the removal of an Indian child from the home of his or her parent or Indian custodian for temporary placement in a foster home, qualified residential treatment program, residential care center for Indian children and youth, or certified shelter care facility, in the home of a relative other than a parent or Indian custodian, or in the home of a guardian, from which placement the parent or Indian custodian cannot have the Indian child returned upon demand. The term does not include an adoptive placement, a preadoptive placement, and emergency change in placement under section 27-20.3-06 or holding an Indian child in custody.
  - e. "Indian" means an individual who is a member of an Indian tribe, or who is a native and a member of a regional corporation as defined under 43 U.S.C. 1606.
  - f. "Indian child" means any unmarried individual who is under the age of eighteen and is either a member of an Indian tribe or is eligible for

- membership in an Indian tribe and is the biological child of a member of an Indian tribe.
- g. "Indian child custody proceeding" means a proceeding brought by the state involving:
- (1) Foster care or nonfoster care placement;
  - (2) A preadoptive placement;
  - (3) An adoptive placement; or
  - (4) A termination of parental rights under section 27-20.3-20 for an Indian child.
- h. "Indian child's tribe" means the Indian tribe in which an Indian child is a member or eligible for membership or, in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts.
- i. "Indian custodian" means any Indian individual who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of the Indian child.
- j. "Indian tribe" means an Indian tribe, band, nation, or other organized Indian group or community of Indians recognized as eligible for services provided to Indians by the United States secretary of the interior because of their status as Indians, including any Alaska native village as defined in 43 U.S.C. 1602(c).
- k. "Parent" means a biological parent or parents of an Indian child or an Indian individual who has lawfully adopted an Indian child, including adoptions under tribal law or custom. The term does not include the unwed father if paternity has not been acknowledged or established.
- l. "Preadoptive placement" means the temporary placement of an Indian child in a foster home, home of a relative other than a parent or Indian custodian, or home of a guardian after a termination of parental rights but before or in lieu of an adoptive placement, but does not include an emergency change in placement under section 27-20.3-06.
- m. "Termination of parental rights" means any action resulting in the termination of the parent-child relationship. It does not include a placement based upon an act by an Indian child which, if committed by an adult, would be deemed a crime or a placement upon award of custody to one of the Indian child's parents in a divorce proceeding.
2. Before removal of an Indian child from the custody of a parent or Indian custodian for purposes of involuntary foster care placement or the termination of parental rights over an Indian child, the court shall find that active efforts have been made to provide remedial services and rehabilitative services designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. The court may not order the removal unless evidence of active efforts shows there has been a vigorous and concerted

level of casework beyond the level that would constitute reasonable efforts under section 27-20.3-26. Reasonable efforts may not be construed to be active efforts. Active efforts must be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe. Active efforts must utilize the available resources of the Indian child's extended family, tribe, tribal and other relevant social service agencies, and individual Indian caregivers.

3. The court may order the removal of the Indian child for involuntary foster care placement only if the court determines, by clear and convincing evidence, that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child. Evidence must show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the Indian child will result in serious emotional or physical damage to the particular Indian child who is the subject of the proceeding. Poverty, isolation, custodian age, crowded or inadequate housing, substance use, or nonconforming social behavior does not by itself constitute clear and convincing evidence of imminent serious emotional or physical damage to the Indian child. As soon as the threat has been removed and the Indian child is no longer at risk, the state should terminate the removal, by returning the Indian child to the parent or Indian custodian while offering a solution to mitigate the situation that gave rise to the need for emergency removal and placement.
4. The court may order the termination of parental rights over the Indian child only if the court determines, by evidence beyond a reasonable doubt that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.
5. In considering whether to involuntarily place an Indian child in foster care or to terminate the parental rights of the parent of an Indian child, the court shall require that a qualified expert witness must be qualified to testify regarding whether the Indian child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's tribe. An individual may be designated by the Indian child's tribe as being qualified to testify to the prevailing social and cultural standards of the Indian child's tribe. If the parties stipulate in writing and the court is satisfied the stipulation is made knowingly, intelligently, and voluntarily, the court may accept a declaration or affidavit from a qualified expert witness in lieu of testimony. The court or any party may request the assistance of the Indian child's tribe or the bureau of Indian affairs office serving the Indian child's tribe in locating individuals qualified to serve as expert witnesses. The social worker regularly assigned to the Indian child may not serve as a qualified expert witness in child custody proceedings concerning the Indian child. The qualified expert witness should be someone familiar with the particular Indian child and have contact with the parent or Indian custodian to observe interaction between the parent or Indian custodian, Indian child, and extended family members. The child welfare agency and courts should facilitate access to the family and records to facilitate accurate testimony.
6. An emergency removal or placement of an Indian child under state law must terminate immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the Indian child.

7. To facilitate the intent of this chapter, the agency, in cooperation with the Indian child's tribe of affiliation, unless a parent objects, shall take steps to enroll the Indian child in the tribe with the goal of finalizing enrollment before termination.

### **27-19.1-02. Jurisdiction over custody proceedings.**

1. This chapter includes requirements that apply if an Indian child is the subject of:
  - a. A child custody proceeding, including:
    - (1) An involuntary proceeding; and
    - (2) A voluntary proceeding that could prohibit the parent or Indian custodian from regaining custody of the Indian child upon demand;
  - b. An emergency proceeding other than:
    - (1) A tribal court proceeding; or
    - (2) A proceeding regarding a delinquent act;
  - c. An award of custody of the Indian child to one of the parents, including an award in a divorce proceeding; or
  - d. A voluntary placement that either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a state agency, chosen for the Indian child and that does not operate to prohibit the Indian child's parent or Indian custodian from regaining custody of the Indian child upon demand.
2. If a proceeding under subsection 1 concerns an Indian child, this chapter applies to that proceeding. In determining whether this chapter applies to a proceeding, the state court may not consider factors such as the participation of a parent or the Indian child in tribal cultural, social, religious, or political activities; the relationship between the Indian child and the Indian child's parent; whether the parent ever had custody of the Indian child; or the Indian child's blood quantum.
3. If this chapter applies at the commencement of a proceeding, this chapter does not cease to apply solely because the Indian child reaches age eighteen during the pendency of the proceeding.
4. In an Indian child custody proceeding under this chapter involving an Indian child who is not residing or domiciled within the reservation of the Indian child's tribe, the court assigned to exercise jurisdiction under this chapter, upon the petition of the Indian child's parent, Indian custodian, or tribe, shall transfer the proceeding to the jurisdiction of the tribe unless either of the following applies:
  - a. A parent of the Indian child objects to the transfer.
  - b. An Indian tribe has exclusive jurisdiction over an Indian child custody proceeding involving an Indian child who resides or is domiciled within the reservation of the tribe, except if that jurisdiction is otherwise vested in the

state by federal law. If an Indian child is a ward of a tribal court, the Indian tribe retains exclusive jurisdiction regardless of the residence or domicile of the Indian child.

5. In an Indian child custody proceeding under this chapter involving an Indian child who is not residing or domiciled within the reservation of the Indian child's tribe, the court assigned to exercise jurisdiction under this chapter, upon the petition of the Indian child's parent, Indian custodian, or tribe, shall transfer the proceeding to the jurisdiction of the tribe unless any of the following apply:
  - a. A parent of the Indian child objects to the transfer.
  - b. The Indian child's tribe does not have a tribal court, or the tribal court of the Indian child's tribe declines jurisdiction.
  - c. The court determines good cause exists to deny the transfer. In determining whether good cause exists to deny the transfer, the court may not consider any perceived inadequacy of the tribal social services department or the tribal court of the Indian child's tribe. The court may determine good cause exists to deny the transfer only if the person opposing the transfer shows by clear and convincing evidence the evidence or testimony necessary to decide the case cannot be presented in tribal court without undue hardship to the parties or the witnesses and that the tribal court is unable to mitigate the hardship by making arrangements to receive the evidence or testimony by use of telephone or live audiovisual means, by hearing the evidence or testimony at a location that is convenient to the parties and witnesses, or by use of other means permissible under the tribal court's rules of evidence.
6. An Indian child's tribe may intervene at any point in an Indian child custody proceeding.
7. The state shall give full faith and credit to the public acts, records, and judicial proceedings of an Indian tribe which are applicable to an Indian child custody proceeding to the same extent that the state gives full faith and credit to the public acts, records, and judicial proceedings of any other governmental entity.

### **27-19.1-03. Court proceedings.**

1. In a proceeding involving the foster care or nonfoster care placement of or termination of parental rights to an Indian child whom the court knows or has reason to know may be an Indian child, the party seeking the foster care or nonfoster care placement or termination of parental rights, for the first hearing of the proceeding, shall notify the Indian child's parent, Indian custodian, and tribe, by registered mail, return receipt requested, of the pending proceeding and of the parties' right to intervene in the proceeding and shall file the return receipt with the court. Notice of subsequent hearings in a proceeding must be in writing and may be given by mail, personal delivery, facsimile transmission, or electronic mail. If the identity or location of the Indian child's parent, Indian custodian, or tribe cannot be determined, that notice shall be given to the United States secretary of the interior in like manner. The first hearing in the proceeding may not be held until at least ten days after receipt of the notice by the parent, Indian custodian, and tribe or until at least fifteen days after receipt of the notice by the United States secretary of the interior. On request of the

parent, Indian custodian, or tribe, the court shall grant a continuance of up to twenty additional days to enable the requester to prepare for that hearing.

2. Each party to a child custody proceeding of an Indian child has the right to examine all reports or other documents filed with the court upon which a decision with respect to the out-of-home care placement, termination of parental rights, or return of custody may be based.

#### **27-19.1-04. Voluntary proceedings - Consent - Withdrawal.**

1. A voluntary consent by a parent or Indian custodian to a foster care or nonfoster care placement of an Indian child is not valid unless the consent or delegation is executed in writing, recorded before a judge, and accompanied by a written certification by the judge that the terms and consequences of the consent or delegation were fully explained in detail to and were fully understood by the parent or Indian custodian. The judge also shall certify the parent or Indian custodian fully understood the explanation in English or that the explanation was interpreted into a language the parent or Indian custodian understood. Any consent or delegation of powers given under this subsection before or within ten days after the birth of the Indian child is not valid. A parent or Indian custodian who has executed a consent or delegation of powers under this subsection may withdraw the consent or delegation for any reason at any time, and the Indian child must be returned to the parent or Indian custodian. A parent or Indian custodian who has executed a consent or delegation of powers under this subsection also may move to invalidate the out-of-home care placement.
2. A voluntary consent by a parent to a termination of parental rights under subdivision d of subsection 1 of section 27-20.3-20 is not valid unless the consent is executed in writing, recorded before a judge, and accompanied by a written certification by the judge that the terms and consequences of the consent were fully explained in detail to and were fully understood by the parent. The judge also shall certify the parent fully understood the explanation in English or that the explanation was interpreted into a language that the parent understood. Consent given under this subsection before or within ten days after the birth of the Indian child is not valid. A parent who has executed a consent under this subsection may withdraw the consent for any reason at any time before the entry of a final order terminating parental rights, and the Indian child must be returned to the Indian child's parent.

#### **27-19.1-05. Placements preferences.**

1. Subject to subsections 3 and 4, in placing an Indian child for adoption or in delegating powers, as described in a lawful executed power of attorney regarding an Indian child, preference must be given, in the absence of good cause, as described in subsection 6, to the contrary, to a placement with or delegation to one of the following, in the order of preference listed:
  - a. An extended family member of the Indian child;
  - b. Another member of the Indian child's tribe;
  - c. Another Indian family with whom the Indian child has a relationship or an Indian family from a tribe that is culturally similar to or linguistically connected to the Indian child's tribe; or

- d. The tribe's statutory adopted placement preferences.
2. An Indian child who is accepted for a foster care or nonfoster care placement or a preadoptive placement must be placed in the least restrictive setting that most approximates a family that meets the Indian child's special needs, if any, and which is within reasonable proximity to the Indian child's home, taking into account those special needs. Subject to subsections 4 and 6, in placing an Indian child in a foster care or nonfoster care placement or a preadoptive placement, preference must be given, in the absence of good cause, as described in subsection 6, to the contrary, to a placement in one of the following, in the order of preference listed:
    - a. The home of an extended family member of the Indian child;
    - b. A foster home licensed, approved, or specified by the Indian child's tribe;
    - c. An Indian foster home licensed or approved by the department; or
    - d. A qualified residential treatment facility or residential care center for children and youth approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the needs of the Indian child.
  3. An Indian child who is the subject of an emergency removal or placement under a child custody determination under section 27-20.3-06 must be placed in compliance with foster care or nonfoster care placement or preadoptive placement preferences, unless the person responsible for determining the placement finds good cause, as described in subsection 6, for departing from the order of placement preference under subsection 2 or finds that emergency conditions necessitate departing from that order. When the reason for departing from that order is resolved, the Indian child must be placed in compliance with the order of placement preference under subsection 2.
  4. In placing an Indian child under subsections 1 and 2 regarding an Indian child under subsection 1, if the Indian child's tribe has established, by resolution, an order of preference that is different from the order specified in subsection 1 or 2, the order of preference established by that tribe must be followed, in the absence of good cause, as described in subsection 6, to the contrary, so long as the placement under subsection 1 is appropriate for the Indian child's special needs, if any, and the placement under subsection 2 is the least restrictive setting appropriate for the Indian child's needs as specified in subsection 2.
  5. The standards to be applied in meeting the placement preference requirements of this subsection must be the prevailing social and cultural standards of the Indian community in which the Indian child's parent, Indian custodian, or extended family members reside or with which the Indian child's parent, Indian custodian, or extended family members maintain social and cultural ties.
  6. a. If a party asserts that good cause not to follow the placement preferences exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the child custody proceeding and the court.

- b. The party seeking departure from the placement preferences bears the burden of proving by clear and convincing evidence that there is good cause to depart from the placement preferences.
- c. A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and must be based on one or more of the following considerations:
  - (1) The request of the Indian child's parent, if they attest that they have reviewed the placement options, if any, that comply with the order of preference.
  - (2) The request of the Indian child, if the Indian child is of sufficient age and capacity to understand the decision being made.
  - (3) The presence of a sibling attachment that can be maintained only through a particular placement.
  - (4) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.
  - (5) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located. For purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent, Indian custodian, or extended family resides or with which the Indian child's parent, Indian custodian, or extended family members maintain social and cultural ties.
- d. A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.
- e. A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a nonpreferred placement that was made in violation of this chapter.
- f. The burden of establishing good cause to depart from the order of placement preference is on the party requesting that departure.
- 7. The department or a child welfare agency shall maintain a record of each adoptive placement, foster care or nonfoster care placement, preadoptive placement, and delegation of powers, made of an Indian child, evidencing the efforts made to comply with the placement preference requirements specified in this section, and shall make that record available at any time on the request of the United States secretary of the interior or the Indian child's tribe.

#### **27-19.1-06. Adoptee information.**

- 1. The state court entering a final adoption decree or order in any voluntary or involuntary Indian child adoptive placement must furnish a copy of the decree or order within thirty days to the Bureau of Indian Affairs, Chief, Division of Human Services, 1849 C Street NW, Mail Stop 3645 MIB, Washington, DC

20240, along with the following information, in an envelope marked "Confidential":

- a. The birth name and birth date of the Indian child, and tribal affiliation and name of the Indian child after adoption;
  - b. The names and addresses of the biological parents;
  - c. The names and addresses of the adoptive parents;
  - d. The name and contact information for any agency having files or information relating to the adoption;
  - e. Any affidavit signed by the biological parent or parents requesting the parent's identity remain confidential; and
  - f. Any information relating to tribal membership or eligibility for tribal membership of the adopted Indian child.
2. The court shall give the birth parent of an Indian child the opportunity to file an affidavit indicating that the birth parent wishes the United States secretary of the interior to maintain the confidentiality of the birth parent's identity. If the birth parent files that affidavit, the court shall include the affidavit with the information provided to the United States secretary of the interior under subsection 1, and that secretary shall maintain the confidentiality of the birth parent's identity.

**SECTION 2. AMENDMENT.** Section 27-20.3-18 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.3-18. 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, 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 families, reunify families, and maintain family connections:
  - a. Before the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home;
  - b. To make it possible for a child to return safely to the child's home;
  - c. Whether and, if applicable, 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 the home of the siblings 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 steps that 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 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 federal Social Security Act [42 U.S.C. 620 et seq. and 42 U.S.C. 6701 et seq.], as amended, and federal regulations adopted under this federal Act, provided that this subsection may not provide a basis for overturning an otherwise valid court order.
7. For the purpose of section ~~27-20.3-19~~27-19.1-01, reasonable efforts were made under this section to meet the child's needs before a foster care placement for a child remaining in care for continued foster care purposes.

<sup>164</sup> **SECTION 3. REPEAL.** Section 27-20.3-19 of the North Dakota Century Code is repealed.

**SECTION 4. LEGISLATIVE MANAGEMENT STUDY - INDIAN CHILD WELFARE.** During the 2023-24 interim, the legislative management shall consider studying the implementation of chapter 27-19.1. The study must include a review of federal statutes related to Indian child welfare, relevant case law, and input from stakeholders. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly.

Approved May 8, 2023

Filed May 9, 2023

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<sup>164</sup> Section 27-20.3-19 was amended by section 23 of House Bill No. 1137, chapter 294.

## CHAPTER 294

### HOUSE BILL NO. 1137

(Representatives Klemin, Hanson)  
(Senators Elkin, Larson)

AN ACT to create and enact a new subdivision to subsection 1 of section 27-20.2-21 and section 27-20.4-05.1 of the North Dakota Century Code, relating to inspection of court files and records, and delinquency referrals to juvenile court; and to amend and reenact sections 14-10-06, 27-20.1-04, and 27-20.1-07, subsection 1 of section 27-20.1-09, section 27-20.2-01, subsection 1 of section 27-20.2-03, section 27-20.2-05, subsection 3 of section 27-20.2-09, section 27-20.2-12, subsection 5 of section 27-20.2-15, sections 27-20.3-01, 27-20.3-03, 27-20.3-04, and 27-20.3-05, subsections 1 and 3 of section 27-20.3-06, subsection 3 of section 27-20.3-08, section 27-20.3-09, subsection 1 of section 27-20.3-10, subsection 1 of section 27-20.3-15, subsection 4 of section 27-20.3-16, subsection 5 of section 27-20.3-19, sections 27-20.3-21, 27-20.3-26, 27-20.4-01, 27-20.4-03, 27-20.4-04, 27-20.4-05, 27-20.4-06, 27-20.4-08, 27-20.4-09, and 27-20.4-10, subsection 5 of section 27-20.4-11, sections 27-20.4-14, 27-20.4-17, 27-20.4-18, and 27-20.4-25, subsection 1 of section 27-20.4-26, and section 27-20.4-27 of the North Dakota Century Code, relating to juvenile court procedures.

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

**SECTION 1. AMENDMENT.** Section 14-10-06 of the North Dakota Century Code is amended and reenacted as follows:

**14-10-06. Unlawful to encourage or contribute to the ~~deprivation or delinquency of minor~~ or the conditions of a child in need of protection - Penalty.**

1. Any individual who by any act willfully encourages, causes, or contributes to the delinquency of a minor or ~~deprivation of any minor~~ the condition of a child in need of protection as defined in section 27-20.2-01 is guilty of a class A misdemeanor.
2. Any individual who by any act willfully encourages, causes, or contributes to the ~~deprivation~~ conditions of a child in need of protection of a child less than sixteen years of age by causing that child to engage in sexual conduct as defined under section 12.1-27.2-01, in any play, motion picture, photograph, dance, or other visual representation is guilty of a class C felony.
3. If an individual is convicted of this section for encouraging, causing, or contributing to the consumption or possession of alcoholic beverages by a minor, 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.

**SECTION 2. AMENDMENT.** Section 27-20.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.1-04. Venue.**

Except as otherwise provided by this section, a proceeding under this chapter must be commenced in the county in which the child resides. If deprivationa child in need of protection is alleged, the proceeding may be brought in the county in which the child is present when it is commenced, the county in which the child has resided for the majority of the thirty days ~~prior to~~before the date of the alleged deprivationchild in need of protection, or the county where the alleged deprivation has conditions of the child in need of protection have occurred. The court shall determine the appropriate venue ~~for a deprivation~~when the conditions of a child in need of protection action is based on the best interest of the child.

**SECTION 3. AMENDMENT.** Section 27-20.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.1-07. Procedure upon filing of petition.**

1. A supporting affidavit establishing the basis for the guardianship under subdivision n of subsection 2 of section 27-20.1-06, and that the guardianship is in the best interest of the child, must be filed with the petition. Where deprivationa child in need of protection is alleged under paragraph 4 of subdivision n of subsection 2 of section 27-20.1-06, the petition must contain sufficient statements to establish deprivationa child in need of protection unless the child has resided in the home of the proposed guardian for at least one year before the filing date of the petition.
2. A petition under this chapter must be reviewed by the court to determine whether the contents of the petition comply with section 27-20.1-06.
3. If a petition alleges deprivationa child in need of protection, the petition will be reviewed by the court to determine whether there has been a sufficient showing of deprivationa child in need of protection.
4. If the petitioner has made an insufficient showing of deprivationa child in need of protection, the court, without oral argument or an evidentiary hearing shall issue an order denying the petition. If the petitioner has made a sufficient showing of deprivationa child in need of protection justifying a guardianship, the court shall set a date for an evidentiary hearing.

<sup>165</sup> **SECTION 4. AMENDMENT.** Subsection 1 of section 27-20.1-09 of the North Dakota Century Code is amended and reenacted as follows:

1. If, at any time in the proceeding, the court determines the interests of the child are or may be inadequately represented and the child is of sufficient age and competency to assist counsel, the court may appoint an attorney to represent the child.

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<sup>165</sup> Section 27-20.1-09 was also amended by section 2 of Senate Bill No. 2224, chapter 308.

<sup>166</sup> **SECTION 5. AMENDMENT.** Section 27-20.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.2-01. Definitions.**

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

1. "Abandon" means:
  - a. As to a parent of a child not in the custody of that parent, failure by the noncustodial parent significantly without justifiable cause:
    - (1) To communicate with the child; or
    - (2) To provide for the care and support of the child as required by law; or
  - b. As to a parent of a child in that parent's custody:
    - (1) To leave the child for an indefinite period without making firm and agreed plans, with the child's immediate caregiver, for the parent's resumption of physical custody;
    - (2) Following the child's birth or treatment at a hospital, to fail to arrange for the child's discharge within ten days after the child no longer requires hospital care; or
    - (3) Willfully fail to furnish food, shelter, clothing, or medical attention reasonably sufficient to meet the child's needs.
2. "Abandoned infant" means a child who has been abandoned before reaching the age of one year.
3. "Certified shelter care" means a nonsecure permanent dwelling operated by an agency certified by the department of health and human services, where employees offer safe shelter, food, and a structured routine, and which is available twenty-four hours a day to a resident in need of emergency placement, not to exceed seven days, unless otherwise approved by the department.
4. "Child" means an individual who is:
  - a. Under the age of eighteen years and is not married; or
  - b. Under the age of twenty years with respect to a delinquent act committed while under the age of eighteen years and not married.
- 4.5. "Child in need of protection" means a child who:
  - a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the need for services or protection is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;

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<sup>166</sup> Section 27-20.2-01 was also amended by section 1 of House Bill No. 1263, chapter 295.

- b. Has been placed for care or adoption in violation of law;
- c. Has been abandoned by the child's parents, guardian, or other custodian;
- d. Is without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent;
- e. Is in need of treatment and whose parents, guardian, or other custodian have refused to participate in treatment as ordered by the juvenile court;
- f. Was subject to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner;
- g. Is present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2; or
- h. Is a victim of human trafficking as defined in title 12.1.

5-6. "Child in need of services" means a child who in any of the foregoing instances is in need of treatment or rehabilitation:

- a. Is habitually and without justification truant from school subject to compulsory school attendance and is absent from school without an authorized excuse more than three days during a school year;
- b. Is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian, or other custodian, including running away, and is ungovernable or who is willfully in a situation dangerous or injurious to the health, safety, or morals of the child or others;
- c. Has committed an offense applicable only to a child, except for an offense committed by a minor fourteen years of age or older under subsection 2 of section 12.1-31-03 or an equivalent local ordinance or resolution; or
- d. Is under the age of fourteen years and has purchased, possessed, smoked, or used tobacco, a tobacco-related product, an electronic smoking device, or an alternative nicotine product in violation of subsection 2 of section 12.1-31-03. As used in this subdivision, "electronic smoking device" and "alternative nicotine product" have the same meaning as in section 12.1-31-03; and
- e. In any of the foregoing instances is in need of treatment or rehabilitation.

6-7. "Custodian" means a person, other than a parent or legal guardian, which stands in loco parentis to the child and a person that has been given legal custody of the child by order of a court.

- 7-8. "Delinquent act" means an act designated a crime under the law, including local ordinances or resolutions of this state, or of another state if the act occurred in that state, or under federal law.
- 8-9. "Delinquent child" means a child who has committed a delinquent act and is in need of treatment or rehabilitation or is a child subject to proceedings arising under the interstate compact on juveniles.
- 9-10. "Director" means the director of juvenile court or the director's designee.
- 10-11. "Diversion" means an intervention strategy that redirects a child away from formal processing in the juvenile justice system, while still holding the child accountable for that child's actions.
- 11-12. "Facility" means buildings, structures, or systems, including those for essential administration and support, which are used to provide residential treatment for children.
- 12-13. "Host county" means the county within the human service zone in which the human service zone administrative office is located and in which the human service zone team members are employed.
- 13-14. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department of health and human services.
- 14-15. "Juvenile court" means the district court of this state.
- 15-16. "Juvenile drug court" means a program established by the supreme court which is a post-petition or post-adjudication program aimed at intervening in substance use disorders through intense supervision and participation in recovery services.
- 16-17. "Proceeding" means any hearing conducted before a juvenile court or a referral for service.
- 17-18. "Qualified residential treatment program" means a licensed or approved residence providing an out-of-home treatment placement for children, including a trauma-informed model.
- 18-19. "Relative" or "kinship relative" means:
- The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt, uncle, great-uncle, nephew, niece, or first cousin;
  - An individual with a relationship to the child, derived through a current or former spouse of the child's parent, similar to a relationship described in subdivision a;
  - An individual recognized in the child's community as having a relationship with the child similar to a relationship described in subdivision a; or
  - The child's stepparent.

- ~~19-20.~~ "Restorative justice" means a system of justice which focuses on the rehabilitation of offenders through reconciliation with victims and the community at large.
- ~~20-21.~~ "Shelter care" means temporary care ~~of a child in physically unrestricted facilities during which a child needs a safe bed outside the home, in a shelter care site or certified shelter care site managed by an agency or licensed foster care facility.~~
- ~~21-22.~~ "The court" means the district courts as designated by the North Dakota supreme court which includes juvenile court as a subset of district court.
- ~~22-23.~~ "Willfully" has the meaning provided in section 12.1-02-02.

**SECTION 6. AMENDMENT.** Subsection 1 of section 27-20.2-03 of the North Dakota Century Code is amended and reenacted as follows:

1. The juvenile court has exclusive original jurisdiction of the following proceedings, which are governed by this chapter:
  - a. Proceedings in which a child is alleged to be delinquent, ~~a child in need of services~~, or a child in need of ~~services or~~ protection under this chapter or ~~chapter~~ chapters 27-20.3 and 27-20.4;
  - b. Proceedings for the termination of parental rights except if a part of an adoption proceeding under ~~chapter 27-20.3~~;
  - c. Proceedings arising under section 27-20.3-16;
  - d. 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; and
  - e. Proceedings for the guardianship of a child under chapter 27-20.1, except the testamentary appointment of a guardian for a minor governed by chapter 30.1-27.

<sup>167</sup> **SECTION 7. AMENDMENT.** Section 27-20.2-05 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.2-05. Powers and duties of the director of juvenile court.**

1. For the purpose of carrying out the objectives and purposes of this chapter and subject to the limitations of this chapter or imposed by the court, a director shall:
  - a. Make investigations, reports, and recommendations to the juvenile court.
  - b. Receive and examine referrals and charges of delinquency, ~~a child in need of services~~, or a child in need of protection for the purpose of considering the commencement of proceedings under this chapter.

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<sup>167</sup> Section 27-20.2-05 was also amended by section 2 of House Bill No. 1263, chapter 295.

- c. Make a determination upon intake of referrals regarding the appropriate manner to handle delinquent conduct, ~~or a child in need of services~~ or a child in need of protection by use of nonjudicial adjustments or formal court processes.
  - d. Supervise and assist a child placed on probation for delinquency ~~or a child in need of services, or both.~~
  - e. Make appropriate referrals to other private or public agencies of the community if assistance of the agencies appears to be needed or desirable.
  - f. Issue a temporary custody order concerning a child who is referred to the director's supervision or care as a delinquent or a child in need of services ~~or protection.~~ Except as provided by this chapter, a director does not have the powers of a law enforcement officer.
  - g. Take acknowledgments of instruments for the purpose of this chapter.
  - h. Make such temporary order not to exceed ninety-six hours for the custody and control of a child alleged to be in need of services ~~or protection~~ as may be deemed appropriate. The order must be reduced to writing within twenty-four hours, excluding holidays and weekends.
  - i. Perform all other functions designated by this chapter or under section 27-05-30 or by order of the court pursuant to such law, including, if qualified, the order of a referee.
  - j. Issue an order to a law enforcement authority to transport a child to and from a specified location.
  - k. Receive and examine requests for review of a child's placement at a qualified residential treatment program under the federal Family First Prevention Services Act [Pub. L. 115-123; 132 Stat. 64; 42 U.S.C. 675].
  - l. Receive and examine petitions to establish, modify, or terminate a guardianship of a minor under chapter 27-20.1.
2. Any of the foregoing functions may be performed in another state if authorized by the court of this state and permitted by the laws of the other state.

**SECTION 8. AMENDMENT.** Subsection 3 of section 27-20.2-09 of the North Dakota Century Code is amended and reenacted as follows:

3. The giving of information and advice and any conditions imposed for the conduct and control of the child may not extend beyond six months from the day commenced unless extended by the court for an additional period not to exceed six months and does not authorize the detention of the child if not otherwise permitted by this chapter. If the child admits to driving or being in actual physical control of a vehicle in violation of section 39-08-01 or an equivalent ordinance, the child may be required to pay a fine as a condition imposed under this section. For a driving-related offense, the conditions may include a restriction on the child's driving privileges as authorized under section 27-20.4-19.

**SECTION 9. AMENDMENT.** Section 27-20.2-12 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.2-12. Right to counsel.**

1. Except as provided in section 27-20.1-09, a child alleged to be within the jurisdiction of the court in an action arising under chapters 27-20.1, 27-20.2, 27-20.3, and 27-20.4 has the right to be represented by counsel in all proceedings in which a petition has been filed. Counsel for the child must be appointed, regardless of income, unless counsel is retained for the juvenile, in any proceeding in which the juvenile is alleged to be:
  - a. Delinquent; or
  - b. ~~A child in need of services; or~~
  - e. A child in need of protection if the child is of sufficient age and competency to assist counsel.
2. A child may waive the right to counsel in a juvenile delinquency proceeding if the child, who is fourteen years of age or older and the court has determined the waiver is knowing, voluntary, and intelligent. The waiver must be made on the record. If a child waives counsel for a hearing, the child must be informed of the right to revoke the waiver and request counsel at all subsequent hearings.
3. The court ~~shall~~may require payment for reimbursement of counsel appointed pursuant to this section from a person that has legal care, custody, or control of the child. The court must include ~~this~~a finding regarding reimbursement in the findings of fact and order for disposition.
4. A child's parent, legal guardian, or custodian is entitled to counsel upon the filing of an application for counsel and a determination of indigency. If a party appears without counsel, the court shall determine 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. A child's parent, legal guardian, or custodian determined to be indigent is entitled to counsel:
  - a. At a detention hearing;
  - b. At the dispositional stage of a juvenile delinquency matter;
  - c. At all proceedings in a child in need of ~~services or~~ protection; or
  - d. In a permanency or review of an order entered in any of the proceedings under subdivision a, b, or c.
5. The child may elect to be represented by counsel for a nonjudicial adjustment.

**SECTION 10. AMENDMENT.** Subsection 5 of section 27-20.2-15 of the North Dakota Century Code is amended and reenacted as follows:

5. In considering whether to involuntarily place an Indian child in foster care or to terminate the parental rights of the parent of an Indian child, the court shall require that a qualified expert witness must be qualified to testify regarding

whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage or harm to the child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's tribe. If the parties stipulate in writing and the court is satisfied the stipulation is made knowingly, intelligently, and voluntarily, the court may accept a declaration or affidavit from a qualified expert witness in lieu of testimony. An individual may be designated by the Indian child's tribe as being qualified to testify to the prevailing social and cultural standards of the Indian child's tribe. The court or any party may request the assistance of the Indian child's tribe or the bureau of Indian affairs office serving the Indian child's tribe in locating individuals qualified to serve as expert witnesses. The social worker regularly assigned to the Indian child may not serve as a qualified expert witness in child-custody proceedings concerning the child. The qualified expert witness should be someone familiar with the particular child and have contact with the parents to observe interaction between the parents, child, and extended family members. The child welfare agency and courts should facilitate access to the family and records to facilitate accurate testimony.

**168 SECTION 11.** A new subdivision to subsection 1 of section 27-20.2-21 of the North Dakota Century Code is created and enacted as follows:

The staff of a juvenile detention center or the staff of a juvenile intake and assessment center designated by the court to assist in performing and scoring the detention screening tool.

**SECTION 12. AMENDMENT.** Section 27-20.3-01 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.3-01. Definitions.**

As used in this chapter:

1. "Abandon" means:
  - a. As to a parent of a child not in the custody of that parent, failure by the noncustodial parent significantly without justifiable cause:
    - (1) To communicate with the child; or
    - (2) To provide for the care and support of the child as required by law; or
  - b. As to a parent of a child in that parent's custody:
    - (1) To leave the child for an indefinite period without making firm and agreed plans, with the child's immediate caregiver, for the parent's resumption of physical custody;
    - (2) Following the child's birth or treatment at a hospital, to fail to arrange for the child's discharge within ten days after the child no longer requires hospital care; or

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<sup>168</sup> Section 27-20.2-21 was also amended by section 12 of House Bill No. 1038, chapter 65.

- (3) Willfully to fail to furnish food, shelter, clothing, or medical attention reasonably sufficient to meet the child's needs.
2. "Abandoned infant" means a child who has been abandoned before reaching the age of one year.
  3. "Aggravated circumstances" means circumstances in which a parent:
    - a. Abandons, tortures, chronically abuses, or sexually abuses a child;
    - b. Fails to make substantial, meaningful efforts to secure treatment for the parent's addiction, mental illness, behavior disorder, or any combination of those conditions for one year;
    - c. Engages in conduct prohibited under sections 12.1-20-01 through 12.1-20-08 or chapter 12.1-27.2, in which a child is the victim or intended victim;
    - d. Engages in conduct that constitutes one of the following crimes, or of an offense under the laws of another jurisdiction which requires proof of substantially similar elements:
      - (1) A violation of section 12.1-16-01, 12.1-16-02, 12.1-16-03, or 14-09-22 in which the victim is another child of the parent;
      - (2) Aiding, abetting, attempting, conspiring, or soliciting a violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is a child of the parent; or
      - (3) A violation of section 12.1-17-02 in which the victim is a child of the parent and has suffered serious bodily injury;
    - e. Engages or attempts to engage in conduct, prohibited under sections 12.1-17-01 through 12.1-17-04, in which a child is the victim or intended victim;
    - f. In the case of a child age nine or older, has been incarcerated under a sentence for which the latest release date is after the child's age of majority;
    - g. Subjects the child to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner; or
    - h. Allows the child to be present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2.
  4. ~~"Attendant care" means a nonsecure holdover site for children in need of services who are in the custody of law enforcement and need constant short-term supervision on a preadjudicatory basis.~~
  5. "Certified shelter care" means a nonsecure permanent dwelling operated by an agency certified by the department of health and human services, where employees offer safe shelter, food, and a structured routine, and which is

available twenty-four hours a day to a resident in need of emergency placement, not to exceed seven days, unless otherwise approved by the department.

5. "Child in need of protection" means a child who:
- a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the need for services or protection is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;
  - b. Has been placed for care or adoption in violation of law;
  - c. Has been abandoned by the child's parents, guardian, or other custodian;
  - d. Is without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent;
  - e. Is in need of treatment and whose parents, guardian, or other custodian have refused to participate in treatment as ordered by the juvenile court;
  - f. Was subject to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner;
  - g. Is present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2; or
  - h. Is a victim of human trafficking as defined in title 12.1.
6. "Child in need of services" means a child who:
- a. Is habitually and without justification truant from school subject to compulsory school attendance and is absent from school without an authorized excuse more than three days during a school year;
  - b. Is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian, or other custodian, including running away, and is ungovernable or who is willfully in a situation dangerous or injurious to the health, safety, or morals of the child or others;
  - c. Has committed an offense applicable only to a child, except for an offense committed by a minor fourteen years of age or older under subsection 2 of section 12.1-31-03 or an equivalent local ordinance or resolution; or
  - d. Is under the age of fourteen years and has purchased, possessed, smoked, or used tobacco, a tobacco-related product, an electronic smoking device, or an alternative nicotine product in violation of subsection 2 of section 12.1-31-03. As used in this subdivision, "electronic

smoking device" and "alternative nicotine product" have the same meaning as in section 12.1-31-03; and

- e. In any of the foregoing instances is in need of treatment or rehabilitation.
7. "Custodian" means a person, other than a parent or legal guardian, which stands in loco parentis to the child and a person to which legal custody of the child has been given by order of a court.
  8. "Diversion" means an intervention strategy that redirects a child away from formal processing in the juvenile justice system, while still holding the child accountable for that child's actions.
  9. "Fit and willing relative or other appropriate individual" means a relative or other individual who has been determined, after consideration of an assessment that includes a criminal history record investigation under chapter 50-11.3, to be a qualified individual under chapters 27-20.1 and 30.1-27, and who consents in writing to act as a legal guardian.
  10. "Home" as used in the phrase "to return home" means the abode of the child's parent with whom the child formerly resided.
  11. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department of health and human services.
  12. "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 the following:
    - 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 the home of the siblings 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, aged sixteen or older, will be placed in another planned permanent living arrangement. The court shall:

- (1) Ask the child whether the child has a desired permanency outcome of another planned permanent living arrangement;
  - (2) Make a judicial determination explaining why another planned permanent living arrangement is the best permanency plan for the child; and
  - (3) Identify the compelling reasons it continues not to be in the best interest of the child to return home, be placed for adoption, be placed with a legal guardian, or be placed with a fit and willing relative.
- 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.
- h. In the case of a child who has attained age fourteen, the services needed to assist the child to make the transition to successful adulthood.
13. "Qualified residential treatment programs" mean residential child care facilities that provide a higher level of care which must use a trauma-informed treatment model and employ registered or licensed nursing staff and other licensed clinical staff to meet the treatment needs of children in out-of-home placement.
14. "Referral" means a written report submitted to the director of juvenile court or the director of the human service zone concerning behavior without an arrest or taking into custody having occurred and the child remains in the parental home to be notified of any action taken by the director or human service zone a child in need of services as authorized in this chapter.
15. "Relative" or "kinship relative" means:
- a. The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt, uncle, great-uncle, nephew, niece, or first cousin;
  - b. An individual with a relationship to the child, derived through a current or former spouse of the child's parent, similar to a relationship described in subdivision a;
  - c. An individual recognized in the child's community as having a relationship with the child similar to a relationship described in subdivision a; or
  - d. The child's stepparent.
16. "Shelter care" means temporary care of a child in physically unrestricted facilities during which a child needs a safe bed outside of the home, in a shelter care site or a certified shelter care site managed by an agency or licensed foster care facility.

**SECTION 13. AMENDMENT.** Section 27-20.3-03 of the North Dakota Century Code is amended and reenacted as follows:

### **27-20.3-03. Venue.**

Except as otherwise provided by this section, a proceeding under this chapter must be commenced in the county in which the child resides. If ~~the need for services or a child in need of protection are~~ alleged, the proceeding may be brought in the county in which the child is present at the time the proceeding is commenced, the county in which the child has resided for the majority of the thirty days before the date of the alleged need for ~~services or protection~~, or the county in which the alleged need for ~~services or protection~~ has occurred. The court shall determine the appropriate venue for ~~a child in need of services or~~ a child in need of protection based on the best interest of the child.

**SECTION 14. AMENDMENT.** Section 27-20.3-04 of the North Dakota Century Code is amended and reenacted as follows:

### **27-20.3-04. Powers and duties of director of juvenile court.**

1. For the purpose of carrying out the objectives and purposes of this chapter and subject to the limitations of this chapter or imposed by the court, a director shall:
  - a. ~~Make investigations, reports, and recommendations to the juvenile court.~~
  - b. ~~Receive and examine referrals of a child in need of services or child in need of protection for the purpose of considering diversion of services.~~
  - e. Make a determination upon intake of referrals regarding the appropriate manner to handle delinquent conduct, ~~a child in need of services, or a child in need of protection~~ under this chapter.
  - d.b. Make appropriate referrals to other private or public agencies of the community if their assistance appears to be needed or desirable.
  - e.c. Issue a temporary custody order concerning a child who is referred to the director's supervision or care as ~~a child in need of services or~~ a child in need of protection. Except as provided by this chapter, a director does not have the powers of a law enforcement officer.
  - f.d. Take acknowledgments of instruments for the purpose of this chapter.
  - g.e. Make such temporary order not to exceed ninety-six hours for the custody and control of a child alleged to be in need of ~~services or~~ protection as may be deemed appropriate. The order must be reduced to writing within twenty-four hours, excluding holidays and weekends.
  - h.f. Perform all other functions designated by this chapter or under section 27-05-30 or by order of the court, including, if qualified, those of a referee.
  - i.g. Issue an order to a law enforcement authority to transport a child to and from a specified location.
  - j.h. Receive and examine requests for review of a child's placement at a qualified residential treatment program under the Family First Prevention Services Act [Pub. L. 115-123; 132 Stat. 64; 42 U.S.C. 675].

2. Any of the foregoing functions may be performed in another state if authorized by the court of this state and permitted by the laws of the other state.

**SECTION 15. AMENDMENT.** Section 27-20.3-05 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.3-05. Method of making a child in need of services referral.**

1. A referral alleging a child is a child in need of services may be made by a parent, guardian or other custodian, a law enforcement officer, a school official, or any other person that has knowledge of the facts alleged and believes such facts are true.
2. ~~A referral alleging a child is a child in need of services under section 27-20.2-01 must be sent to the juvenile court.~~
3. The referral must be set forth in writing and must set forth the following:
  - a. The name, date of birth, and residence address of the child alleged to be a child in need of services;
  - b. The names and residence addresses of the parent, guardian or legal custodian, any other family members, or any other individuals living within the child's home;
  - c. The name of any public institution or agency having the responsibility or ability to supply services alleged to be needed by the child; and
  - d. Whether any of the matters required by this subsection are unknown.
- 4.3. If a school official is filing a referral alleging a child is a child in need of services, information must be included which shows:
  - a. The legally responsible school district has sought to resolve the expressed problem through all appropriate and available educational approaches; and
  - b. The school district has sought to engage the parent, guardian, or legal custodian of such child in solving the problem but such person has been unwilling or unable to do so, that the problem remains, and that court intervention is needed.
- 5.4. If a school official is filing a complaint alleging a child is a child in need of services involving a child who is eligible or suspected to be eligible for services under the federal Individuals with Disabilities Education Act of 1990 [20 U.S.C. 1400 et seq.] or Section 504 of the federal Rehabilitation Act of 1973 [29 U.S.C. 725], information must be included which demonstrates that the legally liable school district:
  - a. Has determined the child is eligible or suspected to be eligible under the federal Individuals with Disabilities Education Act of 1990 [20 U.S.C. 1400 et seq.] or Section 504 of the federal Rehabilitation Act of 1973 [29 U.S.C. 725]; and

- b. Has reviewed for appropriateness the child's current individualized education program and placement and has made modifications as appropriate.

6.5. A referral alleging that a child is a child in need of services under section 27-20.2-01 must be sent to the applicable human service zone.

<sup>169</sup> **SECTION 16. AMENDMENT.** Subsection 1 of section 27-20.3-06 of the North Dakota Century Code is amended and reenacted as follows:

1. A child alleged to be in need of protection may be taken into protective custody:
  - a. Pursuant to an order of the court under this chapter;
  - b. By a law enforcement officer or designee if there are reasonable grounds to believe the child:
    - (1) ~~The child is~~ suffering from illness or injury or is in immediate danger from the child's surroundings, and the child's removal is necessary; ~~or~~
    - (2) ~~The child has~~ in violation of a city or county curfew; or
    - (3) Has run away from the child's parents, guardian, or other custodian; or
  - c. By order of the director made pursuant to section 27-20.3-04.

<sup>170</sup> **SECTION 17. AMENDMENT.** Subsection 3 of section 27-20.3-06 of the North Dakota Century Code is amended and reenacted as follows:

3. A law enforcement officer may transport a child to and from ~~attendant-care~~ shelter care facility or a certified shelter care facility.

**SECTION 18. AMENDMENT.** Subsection 3 of section 27-20.3-08 of the North Dakota Century Code is amended and reenacted as follows:

3. If the petition is not filed within thirty days from the date of protective custody, the child must be released from shelter care.

**SECTION 19. AMENDMENT.** Section 27-20.3-09 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.3-09. Place of shelter care.**

A child alleged to be in need of shelter care may be placed only in:

1. A licensed foster home or a home approved by the court;
2. A shelter care or certified shelter care facility operated by a licensed child welfare agency; or

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<sup>169</sup> Section 27-20.3-06 was also amended by section 17 of House Bill No. 1137, chapter 294.

<sup>170</sup> Section 27-20.3-06 was also amended by section 16 of House Bill No. 1137, chapter 294.

3. Any other suitable place or facility, including a medical facility for the treatment of mental illness, alcoholism, or drug addiction, designated by the court.

**SECTION 20. AMENDMENT.** Subsection 1 of section 27-20.3-10 of the North Dakota Century Code is amended and reenacted as follows:

1. If a child is brought before the court or delivered to a shelter care ~~or certified shelter care~~ facility ~~designated by the court, the director, an intake officer, or other authorized officer of the court or human service zone~~ immediately shall make an investigation and release the child unless it appears that the child's shelter care is warranted or required under section 27-20.3-07. If there is reason to believe the child may be an Indian child and the federal Indian Child Welfare Act of 1978 [25 U.S.C. 1901 through 1963] may apply, the judge or referee may order the child be placed under the custody of the human service zone for a maximum of thirty days from the date of the emergency removal upon finding:
  - a. A return of the child to the parent or Indian custodian would subject the child to imminent danger or harm;
  - b. The court has been unable to transfer the proceeding to the appropriate Indian tribe; or
  - c. Holding an adjudicatory hearing is not possible.

**SECTION 21. AMENDMENT.** Subsection 1 of section 27-20.3-15 of the North Dakota Century Code is amended and reenacted as follows:

1. If a child is found to be a child in need of protection, the court may make any of the following orders of disposition best suited to the protection and physical, mental, and moral welfare of the child:
  - a. Permit the child to reside with the child's parents, guardian, or other custodian, subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child.
  - b. Subject to conditions and limitations as the court prescribes, transfer temporary legal custody to any of the following:
    - (1) An agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child.
    - (2) The director of the human service zone ~~or other public agency~~ ~~authorized by law to receive and provide care for the child.~~
  - c. Require the parents, guardian, or other custodian to participate in treatment.
  - d. Appoint a fit and willing relative or other appropriate individual as the child's legal guardian under section 27-20.1-11.
  - e. 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, establish, by order, some other planned permanent living arrangement.

**SECTION 22. AMENDMENT.** Subsection 4 of section 27-20.3-16 of the North Dakota Century Code is amended and reenacted as follows:

4. If a child is in need of continued foster care services as determined by the human service zone or the department of health and human services and as set forth in a continued foster care agreement, the court shall make the following judicial determination:
  - a. That the child is not in need of ~~services~~ or protection or delinquent, but is in need of continued foster care services;
  - b. That the child will remain in or will return to foster care pursuant to the child's continued foster care agreement;
  - c. That the child's continued foster care agreement has been willfully entered between:
    - (1) The human service zone or the department of health and human services or its agent, the child, and the foster care provider; or
    - (2) An agency or tribal council of a recognized Indian reservation in the state if the child is not subject to the jurisdiction of the state, the child, and the foster care provider;
  - d. That it is in the best interest of the child to remain in or return to foster care;
  - e. That reasonable efforts were made in accordance with subsection 7 of section 27-20.3-18;
  - f. That the child has attained the age of eighteen or older but does not exceed the age of twenty-one years;
  - g. That the child has satisfied the education, employment, or disability requirements under the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 [Pub. L. 110-351] and as set forth by the department of health and human services;
  - h. That the human service zone, as determined by the department of health and human services, or that an agency or tribal council of a recognized Indian reservation in the state, shall continue foster care case management, unless otherwise agreed to or required by the department of health and human services;
  - i. That the human service zone or an agency or tribal council of a recognized Indian reservation in the state must have care and placement responsibility of the child;
  - j. That permanency hearing must be as set forth in section ~~27-20.3-24~~27-20.3-36; and
  - k. That there are no grounds to file a petition to terminate parental rights under section 27-20.3-20.

<sup>171</sup> **SECTION 23. AMENDMENT.** Subsection 5 of section 27-20.3-19 of the North Dakota Century Code is amended and reenacted as follows:

5. In considering whether to involuntarily place an Indian child in foster care or to terminate the parental rights of the parent of an Indian child, the court shall require that a qualified expert witness must be qualified to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's tribe. If the parties stipulate in writing and the court is satisfied the stipulation is made knowingly, intelligently, and voluntarily, the court may accept a declaration or affidavit from a qualified expert witness in lieu of testimony. An individual may be designated by the Indian child's tribe as being qualified to testify to the prevailing social and cultural standards of the Indian child's tribe. The court or any party may request the assistance of the Indian child's tribe or the bureau of Indian affairs office serving the Indian child's tribe in locating individuals qualified to serve as expert witnesses. The social worker regularly assigned to the Indian child may not serve as a qualified expert witness in child-custody proceedings concerning the child. The qualified expert witness should be someone familiar with the particular child and have contact with the parents to observe interaction between the parents, child, and extended family members. The child welfare agency and courts should facilitate access to the family and records to facilitate accurate testimony.

**SECTION 24. AMENDMENT.** Section 27-20.3-21 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.3-21. Petition for termination of parental rights.**

1. As used in this section:
  - a. "A finding that the child has been subjected to child abuse or neglect" means:
    - (1) A finding of a child in need of protection made under this chapter; or
    - (2) A conviction of a person, responsible for a child's welfare, for conduct involving the child, under chapter 12.1-16 or sections 12.1-17-01 through 12.1-17-04 or 12.1-20-01 through 12.1-20-08.
  - b. "Compelling reason" means a recorded statement that reflects consideration of:
    - (1) The child's age;
    - (2) The portion of the child's life spent living in the household of a parent of the child;
    - (3) The availability of an adoptive home suitable to the child's needs;
    - (4) Whether the child has special needs; and

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<sup>171</sup> Section 27-20.3-19 was repealed by section 3 of House Bill No. 1536, chapter 293.

- (5) The expressed wishes of a child age ten or older.
- c. "Department" means the department of health and human services.
  - d. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department.
2. A petition for termination of parental rights must be prepared, filed, and served upon the parties by the state's attorney. A petition may also be prepared by any other person that is not the court, including a law enforcement officer, who has knowledge of the facts alleged or is informed and believes that they are true. A petition prepared by any person other than a state's attorney may not be filed unless the director or the court has determined the filing of the petition is in the best interest of the public and the child.
  3. Except as provided in subsection 4, a petition for termination of parental rights must be filed:
    - a. If the child has been in foster care, in the custody of the department, human service zone, or, in cases arising out of an adjudication by the court of a child ~~in need of services~~ in a delinquency case, the division of juvenile services, for at least four hundred fifty out of the previous six hundred sixty nights;
    - b. Within sixty days after the court has found the child to be an abandoned infant; or
    - c. Within sixty days after the court has convicted the child's parent of one of the following crimes, or of an offense under the laws of another jurisdiction which requires proof of substantially similar elements:
      - (1) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03, or subsection 1 of section 14-09-22 in which the victim is another child of the parent;
      - (2) Aiding, abetting, attempting, conspiring, or soliciting a violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is a child of the parent; or
      - (3) A violation of section 12.1-17-02 in which the victim is a child of the parent and has suffered serious bodily injury.
  4. A petition for termination of parental rights need not be filed if:
    - a. The child is being cared for by a relative approved by the ~~department and~~ human service zone;
    - b. The ~~department or~~ human service zone has documented in the case plan a compelling reason for determining that filing such a petition would not be in the child's best interests and has notified the court that the documentation is available for review by the court; or
    - c. The ~~department or the~~ human service zone has determined:

- (1) Reasonable efforts to preserve and reunify the family are required under section 27-20.3-26 to be made with respect to the child;
  - (2) The case plan provides such services are necessary for the safe return of the child to the child's home; and
  - (3) Such services have not been provided consistent with time periods described in the case plan.
5. For purposes of subsection 3, a child in foster care entered foster care on the earlier of:
  - a. The date of the court's order if the court:
    - (1) Made a finding that the child has been subjected to child abuse or neglect;
    - (2) Determined that it is unsafe or contrary to the welfare of the child to remain in the home; and
    - (3) Granted custody of the child to the ~~department of~~ human service zone or, in cases arising out of an adjudication by the court that a child is in need of services, the division of juvenile services; or
  - b. The date that is sixty days after:
    - (1) The date of a hearing under section 27-20.3-10 which results in maintaining a child in shelter care;
    - (2) The date of an order in a dispositional hearing under which a child is placed in foster care; or
    - (3) The date a child is placed in foster care voluntarily and with the consent of the child's parent.
6. For purposes of subsection 3, a child leaves foster care at the time:
  - a. The court enters an order:
    - (1) Denying a petition to grant care, custody, and control of the child to the human service zone or the division of juvenile services;
    - (2) Terminating an order that granted custody of the child to the human service zone or the division of juvenile services; or
    - (3) Appointing a legal guardian under chapter 27-20.1;
  - b. The court order under which the child entered foster care ends by operation of law;
  - c. The child is placed in a parental home by the court or a legal custodian other than the division of juvenile services and the legal custodian lacks authority to remove the child without further order of the court; or
  - d. The child is placed in a parental home by the division of juvenile services.

7. For purposes of subsection 3, a child is not in foster care on any night during which the child is:
  - a. On a trial home visit;
  - b. Receiving services at the youth correctional center pursuant to an adjudication of delinquency; or
  - c. Absent without leave from the place in which the child was receiving foster care.

**SECTION 25. AMENDMENT.** Section 27-20.3-26 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.3-26. Limitations of time on orders of disposition.**

1. An order terminating parental rights is without limit as to duration.
2. An order of disposition requiring services for the family without the removal of custody may not exceed twelve months from disposition unless extended by the court. The human service zone may request two extensions of up to four months each for the family to complete the treatment goals of the court order and the case plan.
3. Except as provided in subsection 2, an order of disposition pursuant to which a child is placed in foster care may not continue in force for more than twelve months after the child is considered to have entered foster care. Before the extension of any court order limited under this subsection, a permanency hearing must be conducted. Any other order of disposition may not continue in force for more than twelve months.
4. Unless the requirements of a permanency hearing were fulfilled at the hearing, a permanency hearing must be held within thirty days of the court's determination that reasonable efforts to return the child home are not required.
5. Except after a termination of parental rights finding, the court may terminate an order of disposition before the expiration of the order or extend its duration for further periods. An order of extension may be made if:
  - a. A hearing is held before the expiration of the order upon motion of a party or on the court's own motion;
  - b. Reasonable notice of the hearing and opportunity to be heard are given to the parties affected;
  - c. The court finds the extension is necessary to accomplish the purposes of the order extended; and
  - d. The extension does not exceed twelve months from the expiration of an order limited by subsection 3 or two years from the expiration of any other limited order.
- ~~5-6.~~ The court may terminate an order of disposition or extension before its expiration, on or without an application of a party, if it appears to the court the purposes of the order have been accomplished. If a party may be affected

adversely by the order of termination, the order may be made only after reasonable notice and opportunity to be heard have been given to the party.

- ~~6-7.~~ Except as provided in subsection 1, when the child attains the age of twentyeight years, all orders affecting the child who is the subject of a child in need of protection order then in force terminate and the child is discharged from further obligation or control.
- ~~7-8.~~ If an order of disposition is made with respect to a child under the age of ten years pursuant to which the child is placed in foster care without terminating parental rights and the parent and child relationship, the court, before extending the duration of the order, shall determine upon the extension hearing whether the child is adoptable and whether termination of those rights and that relationship is warranted under section ~~27-20.3-03.127-20.3-20~~ and is in the best interest of the child. In that case the notice of the extension hearing also must inform the parties affected that the court will determine whether the child is adoptable and whether termination of their parental rights and the parent and child relationship is warranted and in the best interest of the child and that a further order of disposition may be made by the court placing the child with a view to adoption. If the court determines the child is adoptable and termination of parental rights and the parent and child relationship is warranted and is in the best interest of the child, the court shall make a further order of disposition terminating those rights and that relationship and committing the child under section ~~27-20.3-0927-20.3-24~~.

<sup>172</sup> **SECTION 26. AMENDMENT.** Section 27-20.4-01 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.4-01. Definitions.**

1. "Accountability" means that after a child is determined to have committed delinquent behavior, by admission or adjudication, the child is held responsible for the behavior through individualized and structured consequences or sanctions for the loss, damage, or injury suffered and proportionate to the offense.
2. "Arrest" means a taking into custody of a child by law enforcement in the manner authorized by law to answer for the commission of a delinquent offense.
3. "Attendant care" is a nonsecure holdover site for delinquent children ~~or children in need of services~~ who have been picked up by law enforcement and need constant short-term supervision on a preadjudicatory basis or as an alternative to detention.
4. "Certified shelter care" means a nonsecure permanent dwelling operated by an agency certified by the department of health and human services, where employees offer safe shelter, food, and a structured routine, and which is available twenty-four hours a day to a resident in need of emergency placement, not to exceed seven days, unless otherwise approved by the department.
5. "Child" means an individual who is:

<sup>172</sup> Section 27-20.4-01 was also amended by section 1 of House Bill No. 1160, chapter 296.

- a. Under the age of eighteen years and is not married; or
- b. Under the age of twenty years with respect to a delinquent act committed while under the age of eighteen years and not married.

- ~~5-6.~~ "Community-based program" means a nonresidential program.
- ~~6-7.~~ "Custodian" means a person, other than a parent or legal guardian, which stands in loco parentis to the child and a person that has been given legal custody of the child by order of a court.
- ~~7-8.~~ "Delinquent act" means an act designated a crime under the law, including local ordinances or resolutions of this state, or of another state if the act occurred in that state, or under federal law.
- ~~8-9.~~ "Delinquent child" means a child who has committed a delinquent act and is in need of treatment or rehabilitation or is a child subject to proceedings arising under the interstate compact on juveniles.
- ~~9-10.~~ "Detention" means a physically secure facility with locked doors. The term does not include shelter care, attendant care, or home confinement.
- ~~10-11.~~ "Director" means the director of juvenile court services.
- ~~11-12.~~ "Dispositional stage" means any proceeding after adjudication for a delinquent offense.
- ~~12-13.~~ "Diversion" means an intervention strategy made by a person with authority which directs the child away from formal court processing to a specifically designed program or activity to hold the child accountable for the actions of the child and prevents further involvement in the formal legal system.
- ~~13-14.~~ "Division" means the division of juvenile services.
- ~~14-15.~~ "Evidence-based" means a program or practice that has had multiple randomized control studies demonstrating the program or practice is effective for a specific population, has been researched, and has been rated as effective by a standardized program evaluation tool.
- ~~15-16.~~ "Facility" means buildings, structures, or systems, including those for essential administration and support, which are used to provide residential treatment for children.
- ~~16-17.~~ "Fit and willing relative or other appropriate individual" means a relative or other individual who has been determined, after consideration of an assessment that includes a criminal history record investigation under chapter 50-11.3, to be a qualified individual under chapters 27-20.1 and 30.1-27, and who consents in writing to act as a legal guardian.
- ~~17-18.~~ "Graduated sanctions" means a calibrated system of sanctions designed to ensure that children face timely and consistent consequences that correspond to the frequency and nature of a child's noncompliant behaviors, public safety risk, and engagement in supervision and services.

- 18-19. "Home" when used in the phrase "to return home" means the abode of the child's parent with whom the child formerly resided.
- 19-20. "Home confinement" means predisposition or post-disposition temporary placement of a child in the child's home, or a surrogate home with the consent of the child's parent, guardian, or custodian for supervision.
- 20-21. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department of health and human services.
- 21-22. "Incentives" means calibrated system of rewards designed so that children receive immediate and consistent feedback that supports appropriate behavior and follow through with probation conditions.
- 22-23. "Informal adjustment" means a meeting held by the director of juvenile court or designee to resolve a low-level delinquent referral and is an alternative to the filing of a petition for formal court processing.
- 23-24. "Intensive supervision probation program" means a community-based alternative that provides a higher degree of supervision and use of graduated incentives and sanctions over a child, post-adjudication, to ensure public safety and applies to children who are at high risk to reoffend.
- 24-25. "Juvenile court" means the district court of this state.
- 25-26. "Juvenile drug court" means a program established by the supreme court which is a post-petition or post-adjudication program aimed at intervening in substance use disorders through intense supervision and participation in recovery services.
- 26-27. "Pick up and hold order" means an order of the court to take a child into custody based upon an allegation of delinquency or failure to appear for court, or a determination the child poses a risk to public safety while under court-ordered supervision.
- 27-28. "Predisposition assessment" means an investigation, assessment, and written report to the court based on the results of risk and need screening and assessment tools regarding a disposition for a delinquent child.
- 28-29. "Proceeding" means any hearing or informal adjustment conducted before a court.
- 29-30. "Qualified residential treatment program" means a licensed or approved residence providing an out-of-home treatment placement for children including a trauma-informed model.
- 30-31. "Referral" means a written report of alleged delinquent behavior of a child which is received by the director of juvenile court.
- 31-32. "Relative" or "kinship relative" means:
- a. The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt, uncle, great-uncle, nephew, niece, or first cousin;

- b. An individual with a relationship to the child, derived through a current or former spouse of the child's parent, similar to a relationship described in subdivision a;
- c. An individual recognized in the child's community as having a relationship with the child similar to a relationship described in subdivision a; or
- d. The child's stepparent.

32-33. "Risk factors" means characteristics and behaviors that, when addressed or changed, affect a child's risk for committing delinquent acts.

33-34. "Shelter care" means temporary care of a child in physically unrestricted facilities during which a child needs a safe bed outside the home, in a shelter care site or a certified shelter care site managed by an agency or licensed foster care facility.

34-35. "Treatment" means targeting interventions that focus on risk factors, improved mental health, and improved positive youth outcomes.

**SECTION 27. AMENDMENT.** Section 27-20.4-03 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.4-03. Venue.**

A proceeding under this chapter may be commenced in the county in which the child resides. ~~If delinquent conduct is alleged, the proceeding is commenced in the county in which the acts constituting the alleged delinquent conduct occurred. If delinquent conduct is alleged in part in one county and in part in another county, the venue is in either of the counties. If it is in the best interest of the child, the case may be commenced in the child's county of residence.~~

**SECTION 28. AMENDMENT.** Section 27-20.4-04 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.4-04. Powers and duties of director of juvenile court.**

1. For the purpose of carrying out the objectives and purposes of this chapter and subject to the limitations of this chapter or imposed by the court, a director shall:
  - a. Make investigations, reports, and recommendations to the juvenile court.
  - b. Receive and examine complaints, referrals, and charges of delinquency for the purpose of considering the commencement of proceedings under this chapter.
  - c. Make a determination upon intake of runaway referrals ~~regarding the appropriate manner to handle a child in need of services or a child in need of protection by use of nonjudicial commencement of proceedings under this chapter~~ subject to the interstate compact on juveniles for purposes of compliance with the compact.
  - d. Supervise and assist a child placed on probation for delinquency.

- e. Make appropriate referrals to other private or public agencies of the community if their assistance appears to be needed or desirable.
  - f. Issue a temporary custody order concerning a child who is referred to the director's supervision or care as a delinquent child. Except as provided by this chapter, a director does not have the powers of a law enforcement officer.
  - g. Take acknowledgments of instruments for the purpose of this chapter.
  - h. Perform all other functions designated by this chapter, under section 27-05-30, or by order of the court, including, if qualified, those of a referee.
  - i. Issue an order to a law enforcement authority to transport a child to and from a specified location.
  - j. Receive and examine requests for review of a child's placement at a qualified residential treatment program under the Family First Prevention Services Act [Pub. L. 115-123; 132 Stat. 64; 42 U.S.C. 675].
2. Any of the foregoing functions may be performed in another state if authorized by the court of this state and permitted by the laws of the other state.

**SECTION 29. AMENDMENT.** Section 27-20.4-05 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.4-05. Taking into custody.**

1. A child may be taken into custody:
  - a. Pursuant to a pick up and hold order or other order of the court under this chapter;
  - b. Pursuant to the laws of arrest and as authorized after scoring of the detention screening tool; or
  - c. For preadjudicatory supervision in attendant care or, shelter care, certified shelter care, or detention.
2. The taking of a child into custody is not an arrest, except for the purpose of determining the validity of the arrest under the Constitution of North Dakota or the United States Constitution.
3. A law enforcement officer shall transport a child if necessary as determined by the court.

**SECTION 30.** Section 27-20.4-05.1 of the North Dakota Century Code is created and enacted as follows:

**27-20.4-05.1. Method of making a delinquency referral to juvenile court.**

1. A referral alleging a child has committed a delinquent act may be made to the juvenile court by a law enforcement officer who has reasonable grounds and knowledge of the facts alleged and believes such facts are true.

2. If a child is taken into custody on the alleged delinquent act, the law enforcement officer shall send the referral to the juvenile court within twenty-four hours after the time in which the minor is taken into custody under section 27-20.4-05.
3. A child who commits an infraction or misdemeanor offense on school property may not be referred to the juvenile court unless school interventions have been unsuccessful and documentation is included with the referral indicating which interventions or educational approaches were attempted.
  - a. A school is not required to engage in interventions before referring a case for the following misdemeanor offenses:
    - (1) Drug-related offenses under title 19;
    - (2) Offenses against a person under chapter 12.1-17, 12.1-31.2, or 14-07.1;
    - (3) Sex offenses under chapters 12.1-20, 12.1-27.1, 12.1-27.2, and 12.1-29; and
    - (4) Any offense involving a firearm, weapon, or dangerous weapon as defined in section 62.1-01-01.
  - b. A law enforcement officer may:
    - (1) Investigate possible delinquent offenses and conduct occurring at a school, including conducting probable cause searches;
    - (2) Consult with school staff about the conduct of a child enrolled in a school;
    - (3) Refer a child to the juvenile court for a delinquent offense occurring on school grounds or on school property as allowed by this section;
    - (4) Transport a child enrolled in a school to a location permitted by law;
    - (5) Take temporary custody of a child in accordance with section 27-20.4-05 or protective custody of a child in accordance with section 27-20.3-06; and
    - (6) Protect the safety of students and the school community.

**SECTION 31. AMENDMENT.** Section 27-20.4-06 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.4-06. Detention - Nonsecure care of child.**

1. A child taken into custody may not be detained or placed in nonsecure care before the hearing on the petition unless the child's detention or nonsecure care is required to protect the person or property of others or of the child or because the child may abscond or be removed from the jurisdiction of the court or because the child has no parent, guardian, or custodian or other person able to provide supervision and care for the child and return the child to the court if required, or an order for the child's detention or nonsecure care has been made by the court pursuant to this chapter.

2. Law enforcement, juvenile court staff, ~~and~~ or division staff shall use a detention screening tool to assure the appropriate use of detention and whether the child is a public safety risk. The juvenile court shall establish the detention screening tool, which must include objective factors to aid in the decision of placement of the child. Law enforcement, court records, and division records must include data on detention screening scores and, if the score does not authorize detention, the explanation for the override resulting in placing the juvenile in detention.
3. The court may place a juvenile in detention ~~before adjudication~~ only if the court finds releasing the child would pose ~~an unreasonable~~ a risk to public safety and that all less restrictive alternatives have been considered.
4. A juvenile may be placed in a secure detention facility if one or more of the following conditions are met:
  - a. The child is alleged to have committed an offense that if committed by an adult would constitute a felony against person, felony weapon, or felony drug distribution;
  - b. The child has a record of failure to appear in court or there is probable cause to believe that the child will flee the jurisdiction of the court;
  - c. The child has violated the terms of detention release on home confinement or electronic monitoring;
  - d. There is oral or written verification that the child is an alleged delinquent child sought for an offense in another jurisdiction or that the child left a juvenile detention facility without authorization;
  - e. The child is an out-of-state runaway subject to the rules of the interstate commission on juveniles;
  - f. The child meets criteria for secure detention on the detention screening tool; or
  - g. The child meets criteria for an override on the detention screening tool.
5. A child may not be placed in detention ~~by law enforcement or juvenile court, including drug court solely~~.
  - a. Due to a lack of supervision alternatives, service options, or more appropriate facilities-;
  - b. Due to the community's inability to provide treatment or services-;
  - c. Due to a lack of supervision in the home or community-;
  - d. In order to allow a parent, guardian, or legal custodian to avoid his or her legal responsibility-;
  - e. Due to a risk of the juvenile's self-harm-;
  - f. In order to attempt to punish, treat, or rehabilitate the child-;
  - g. Due to a request by a victim, law enforcement, or the community-; or

- h. In order to permit more convenient administrative access to the juvenile.
- 6. Alternatives to secure detention may be utilized to include home confinement, electronic monitoring, and parental or guardian supervision if the court determines there is no unreasonable risk to public safety.
- 7. A child placed in detention must have a mental health and trauma screening tool completed by the juvenile detention center or by juvenile court upon entry and provide that information to the juvenile court before release or detention hearing.

**SECTION 32. AMENDMENT.** Section 27-20.4-08 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.4-08. Place of detention.**

- 1. A child alleged to be delinquent may be detained only in:
  - 4. a. A licensed foster home or a home approved by the court;
  - 2. b. A facility operated by a licensed child welfare agency;
  - 3. c. A detention home or center for delinquent children which is under the direction or supervision of the court or other public authority or of a private agency approved by the court:
    - a. Any or any other suitable place or facility, including a medical facility for the treatment of mental illness, alcoholism, or drug addiction, designated by the court; ~~or~~
    - b. ~~A jail or other facility for the detention of adults only if the facility is not available, the detention is in a room separate and removed from those for adults, it appears to the satisfaction of the court, the director, or designee, that public safety and protection reasonably require detention, and it is so authorized.~~
- 2. A child alleged or adjudicated delinquent, who has not reached the age of eighteen, may not be held in an adult jail or correctional facility, adult lockup, or court holding facility.

**SECTION 33. AMENDMENT.** Section 27-20.4-09 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.4-09. Release from detention or nonsecure care - Hearing - Conditions of release.**

- 1. If a child is brought before the court or delivered to a detention, attendant care, or nonsecure care facility designated by the court, the director, the intake officer, or other authorized officer of the court immediately shall make an investigation and release the child unless it appears that the child's detention is warranted or required under section 27-20.4-05.
- 2. Reasonable notice of the release from detention must be provided to any victim as required by subsection 19 of section 12.1-34-02.

3. If the child is not released, reasonable notice, either oral or written, stating the time, place, and purpose of the detention or shelter care must be given to the child and, if able to be found, to the child's parents, guardian, or other custodian. If the child is not represented by counsel at a proceeding, the court shall inform the child of the right to counsel, regardless of income. Before the commencement of the hearing, the court shall inform the child's parents, legal guardian, or custodian of the right to counsel at public expense at the dispositional stage if the parent, guardian, or custodian applies and is determined to be indigent and of the child's right to remain silent with respect to any allegations of delinquent conduct.
  - a. If the child is not released from detention, a judge or referee shall hold a detention hearing within twenty-four hours after the time the child is placed in detention, excluding weekends or legal holidays, to determine whether there is probable cause to believe the child has committed the delinquent act alleged, and whether the child's detention is required under section 27-20.4-05. In determining whether a child requires detention, the court shall consider the results of the detention screening tool.
  - b. If the child is not released from attendant care or nonsecure care, a judge or referee shall hold a hearing promptly and not later than ninety-six hours after the child is placed in nonsecure care to determine whether there is probable cause to believe the child has committed a delinquent act and whether the child's shelter care is required.
4. If the child is not released and a parent, guardian, or custodian has not been notified of the hearing, did not appear or waive appearance at the hearing, and files an affidavit showing these facts, the court shall rehear the matter without unnecessary delay and order the child's release, unless it appears from the hearing that the child's detention is required under section 27-20.4-05.
5. If the parents cannot be found or fail to appear for the detention or nonsecure care hearing and the child does not pose a substantial risk to the community and needs~~does not need~~ to be detained, the human service zone is notified and a child in need of protection or services~~shelter~~ care hearing is held.
6. If it appears that any child being held in detention, attendant care, or shelter care nonsecure care may have an intellectual or developmental disability, the court or detention personnel shall refer the child to the department of health and human services for an eligibility determination for intellectual or developmental disabilities program management services and a level of care assessment and the results must be filed with the court upon completion. The department of health and human services shall provide status updates to the court within the time required by the court.
7. If it appears that any child being held in detention or nonsecure care appears to have a serious and persistent mental illness, the detention staff or court intake officer shall request that the court order a diagnostic assessment that includes a recommendation for necessary level of care that must be conducted within forty-eight hours after the court's order. The person conducting the diagnostic assessment shall file the results with the court.
8. If an individual who is or appears to be a child is received at a jail facility or other facility for the detention of adult offenders or individuals charged with a

crime, the official in charge of the facility immediately shall inform the court and bring the individual before the court upon request or deliver the individual to a detention or nonsecure facility designated by the court.

9. If a case is transferred to another adult court for criminal prosecution, the child who has not reached the age of eighteen may not be transferred to the appropriate officer or detention adult jail or correctional facility, adult lockup, or court holding facility in accordance with the law governing the detention of persons charged with a crime. A child who has not reached the age of eighteen may continue to be held in a juvenile detention facility during the pendency of the criminal prosecution but only as ordered by the court.

**SECTION 34. AMENDMENT.** Section 27-20.4-10 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.4-10. Diversion.**

1. Before an informal adjustment is held or a petition is filed, the director of juvenile court or designee may determine that no further action is required or impose conditions in lieu of further proceedings for the conduct and control of the child with a diversion to a community-based program or service.
2. A child referred to the court may be considered for diversion if any of the following criteria are met:
  - a. The referral is for a delinquent act that is not an offense requiring a notification to be sent to the department of transportation;
  - b. The referral is for a delinquent act that has not been previously diverted more than twice by the juvenile court within the last twelve months; or
  - c. The referral is not an offense that could require sex offender registration.
3. ~~Effective August 1, 2023, except for a drug-related offense, simple assault under chapter 12.1-17-01, or domestic violence under chapter 12.1-17-01.2, a child who commits an infraction or misdemeanor offense on school grounds during hours of operation may not be referred to the juvenile court.~~

**SECTION 35. AMENDMENT.** Subsection 5 of section 27-20.4-11 of the North Dakota Century Code is amended and reenacted as follows:

5. An informal agreement may not extend beyond six months from the day the agreement was agreed upon. An extension may be granted by the court for an additional period not to exceed six months. An extension may not authorize the detention of the child if not otherwise permitted by this chapter. ~~If the child admits to driving or being in actual physical control of a vehicle in violation of section 39-08-01 or an equivalent ordinance, the child may be required to pay a fine as a condition imposed under this section.~~ For a driving-related offense, the agreement may include a restriction on the child's driving privileges as allowed under section 27-20.4-19.

**SECTION 36. AMENDMENT.** Section 27-20.4-14 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.4-14. Conduct of hearings.**

1. Hearings under this chapter must be conducted by the court without a jury, in an informal but orderly manner and separately from other proceedings not included in section 27-20.2-03 and in accordance with the North Dakota Rules of Juvenile Procedure.
2. If the hearing has not been held within the time limit, or any extension of the time limit, required by the North Dakota Rules of Juvenile Procedure, the petition must be dismissed.
3. The state's attorney shall present the evidence in support of any allegations of the petition not admitted and otherwise conduct the proceedings on behalf of the state.
4. Except for a diversion under section 27-20.4-10 or an informal adjustment~~adjustment~~ under section ~~27-20.4-10~~27-20.4-11, the proceedings must be recorded by stenographic notes or by electronic, mechanical, or other appropriate means.
5. The general public must be excluded from all hearings under this chapter. During hearings, only the parties, the parties' counsel, witnesses, victims, and any other persons the court finds have a proper interest in the proceedings may be admitted by the court. The court may temporarily exclude the child or other person from the hearing if, after being warned by the court that disruptive conduct will cause removal from the courtroom, the child or other person persists in conduct that justifies removal from the courtroom.

<sup>173</sup> **SECTION 37. AMENDMENT.** Section 27-20.4-17 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.4-17. Disposition of a delinquent child.**

1. If the child is found to be a delinquent child, the court shall make findings and include in the order of disposition any actions or steps necessary to ensure:
  - a. The child receives the treatment or rehabilitation the court deems most appropriate;
  - b. Repairing harm caused to the victim or community; and
  - c. Safety of the community.
2. If the child is found to be a delinquent child, the court may order probation with conditions best suited to the child's individual need for treatment, rehabilitation, and welfare.
3. ~~If the court cannot find a less restrictive alternative, the~~The court may commit a child to the division of juvenile services. ~~A risk and needs assessment must be the basis for the determination of commitment to the division of juvenile services. The court only may commit a child to the division for a new delinquent offense. Unless all probation extensions have been exhausted, the child's risk and treatment needs continue to be high and the child is refusing to comply with the terms of probation, the court may not commit a child for a violation of the terms of probation.~~

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<sup>173</sup> Section 27-20.4-17 was also amended by section 2 of House Bill No. 1160, chapter 296.

4. The court may:
  - a. Order the child to make monetary restitution to the victim of the offense or to complete a specified number of hours of community service as determined by the court, or both;
  - b. Order the periodic testing for the use of illicit drugs or alcohol; or
  - c. Order the child's participation in a juvenile drug court program.
5. If the delinquent act committed by the child was a sexual offense, the court shall ensure the child is assessed in a timely manner, not to exceed thirty days, with age-appropriate social assessments to determine the appropriate level of required treatment.

<sup>174</sup> **SECTION 38. AMENDMENT.** Section 27-20.4-18 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.4-18. Probation of a delinquent child.**

1. A probation order entered by the court must place the child under the supervision of the director.
2. The conditions of probation must be specifically stated in writing and provided to the child.
3. Probation conditions must relate to the individual child's risk and needs assessment and the adjudicated offense.
4. Violations of probation conditions may be sanctioned by the juvenile director, or designee utilizing graduated sanctions ~~and incentives~~.
5. Formal probation orders may not exceed twelve months from disposition.
6. The court may release a child from probation or modify the terms and conditions of the probation at any time, but the court shall release a child who has complied satisfactorily with the terms, conditions, and duration of probation and the court shall terminate the court's jurisdiction.
7. The director of juvenile court shall establish procedures regarding graduated sanctions and incentives. The graduated sanctions program may include a program of home confinement or electronic monitoring but may not include a secure detention stay.
8. The director or assigned probation court officer may request two extensions up to four months each ~~or one extension up to four months for intensive-supervised probation programs~~ for failure to comply or meet the treatment goals of the court order and case plan.
9. Probation may not be extended solely to collect restitution. If probation is terminated with restitution owing the victim, court procedure governs continued collection or motion for civil judgment against the parents, if appropriate.

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<sup>174</sup> Section 27-20.4-18 was also amended by section 3 of House Bill No. 1160, chapter 296.

**SECTION 39. AMENDMENT.** Section 27-20.4-25 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.4-25. Law enforcement and correctional facility records.**

1. Unless a charge of delinquency is transferred for criminal prosecution under section 27-20.4-20, the interest of national security requires, or the court otherwise orders in the interest of the child, the law enforcement and correctional facility records and files of a child alleged or found to be delinquent ~~or in need of services or protection~~ are not open to public inspection; but inspection of these records and files is permitted by:
  - a. A juvenile court having the child before the court in any proceeding;
  - b. Counsel for a party to the proceeding;
  - c. The officers of public institutions or agencies to whom the child is or may be committed;
  - d. Law enforcement officers of other jurisdictions if necessary for the discharge of official duties of the officers;
  - 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;
  - f. The professional staff of the uniform crime victims compensation program if necessary for the discharge of the duties of the professional staff pursuant to chapter 54-23.4; and
  - g. A superintendent, assistant superintendent, principal, or designee 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 ~~or in need of services or protection~~ are not open to public inspection, this section does not limit the release of general information that does not identify the identity of the child.

**SECTION 40. AMENDMENT.** Subsection 1 of section 27-20.4-26 of the North Dakota Century Code is amended and reenacted as follows:

1. If a child is subject to nonjudicial adjustments under this chapter ~~and~~ is found to be delinquent under section 27-20.4-16, ~~or is found to be in need of services or protection under section 27-20.3-16~~, the juvenile court may require a substance use screening and subsequent programming to appropriately address:
  - a. A child who is found to have violated section 39-08-01 or equivalent; or
  - b. If a child is found to have an alcohol concentration of at least two one-hundredths of one percent by weight at the time of performance of a

test within two hours after driving or being in physical control of a motor vehicle.

**SECTION 41. AMENDMENT.** Section 27-20.4-27 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.4-27. Tribal juvenile services cooperative agreement —~~Report to legislative management. (Expired effective July 31, 2023)~~**

4. The department of corrections and rehabilitation, through the division of juvenile services; the supreme court, through the office of the state court administrator; and the Indian affairs commission may negotiate and enter a memorandum of understanding with the tribal government of a federally recognized Indian tribe in the state for the purpose of accepting and providing for, in accordance with this chapter, the treatment and rehabilitation of tribal juveniles who have been adjudicated in tribal court under tribal or federal laws. Under the pilot program and terms of a memorandum of understanding:

- a-1. The tribal government, the department of corrections and rehabilitation, and the juvenile court may exchange information relevant to the treatment and rehabilitation needs of a tribal juvenile and the juvenile's family, including tribal court orders, medical and psychiatric reports, law enforcement reports, and other information pertinent to the referral;
  - b-2. The juvenile court and the department of corrections and rehabilitation shall provide services based on the individualized need of each tribal juvenile referred to and accepted by the tribal court, juvenile court, and department of corrections and rehabilitation;
  - e-3. The juvenile court and the department of corrections and rehabilitation shall maintain regular contact with the tribe regarding each tribal juvenile who has been placed in the supervision of the respective agency; and
  - d-4. The juvenile court and the department of corrections and rehabilitation may limit the number of tribal juveniles accepted based on criteria developed by the juvenile court and the availability of state resources and services.
2. ~~Before July first of each even-numbered year, the department of corrections and rehabilitation, the juvenile court, and the Indian affairs commission shall report and make recommendations to the legislative management on the status, effectiveness, performance, and sustainability of a memorandum of understanding established under this section.~~

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 295

### HOUSE BILL NO. 1263

(Representatives Klemin, Cory, Hanson, Karls, Roers Jones)  
(Senators Braunberger, Dever, Dwyer, Elkin, Larson)

AN ACT to create and enact a new subdivision to subsection 1 of section 27-20.2-05 of the North Dakota Century Code, relating to the powers of the director of juvenile court; and to amend and reenact sections 27-20.2-01 of the North Dakota Century Code, relating to the Juvenile Court Act definitions.

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

<sup>175</sup> **SECTION 1. AMENDMENT.** Section 27-20.2-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **27-20.2-01. Definitions.**

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

1. "Abandon" means:
  - a. As to a parent of a child not in the custody of that parent, failure by the noncustodial parent significantly without justifiable cause:
    - (1) To communicate with the child; or
    - (2) To provide for the care and support of the child as required by law; or
  - b. As to a parent of a child in that parent's custody:
    - (1) To leave the child for an indefinite period without making firm and agreed plans, with the child's immediate caregiver, for the parent's resumption of physical custody;
    - (2) Following the child's birth or treatment at a hospital, to fail to arrange for the child's discharge within ten days after the child no longer requires hospital care; or
    - (3) Willfully fail to furnish food, shelter, clothing, or medical attention reasonably sufficient to meet the child's needs.
2. "Abandoned infant" means a child who has been abandoned before reaching the age of one year.
3. "Child" means an individual who is:
  - a. Under the age of eighteen years and is not married; or

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<sup>175</sup> Section 27-20.2-01 was also amended by section 5 of House Bill No. 1137, chapter 294.

- b. Under the age of twenty years with respect to a delinquent act committed while under the age of eighteen years and not married.
4. "Child in need of protection" means a child who:
    - a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the need for services or protection is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;
    - b. Has been placed for care or adoption in violation of law;
    - c. Has been abandoned by the child's parents, guardian, or other custodian;
    - d. Is without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent;
    - e. Is in need of treatment and whose parents, guardian, or other custodian have refused to participate in treatment as ordered by the juvenile court;
    - f. Was subject to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner;
    - g. Is present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2; or
    - h. Is a victim of human trafficking as defined in title 12.1.
  5. "Child in need of services" means a child who in any of the foregoing instances is in need of treatment or rehabilitation:
    - a. Is habitually and without justification truant from school subject to compulsory school attendance and is absent from school without an authorized excuse more than three days during a school year;
    - b. Is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian, or other custodian, including running away, and is ungovernable or who is willfully in a situation dangerous or injurious to the health, safety, or morals of the child or others;
    - c. Has committed an offense applicable only to a child, except for an offense committed by a minor fourteen years of age or older under subsection 2 of section 12.1-31-03 or an equivalent local ordinance or resolution; or
    - d. Is under the age of fourteen years and has purchased, possessed, smoked, or used tobacco, a tobacco-related product, an electronic smoking device, or an alternative nicotine product in violation of subsection 2 of section 12.1-31-03. As used in this subdivision, "electronic

smoking device" and "alternative nicotine product" have the same meaning as in section 12.1-31-03; and

- e. In any of the foregoing instances is in need of treatment or rehabilitation.
6. "Custodian" means a person, other than a parent or legal guardian, which stands in loco parentis to the child and a person that has been given legal custody of the child by order of a court.
  7. "Delinquent act" means an act designated a crime under the law, including local ordinances or resolutions of this state, or of another state if the act occurred in that state, or under federal law.
  8. "Delinquent child" means a child who has committed a delinquent act and is in need of treatment or rehabilitation.
  9. "Director" means the director of juvenile court or the director's designee.
  10. "Diversion" means an intervention strategy that redirects a child away from formal processing in the juvenile justice system, while still holding the child accountable for that child's actions.
  11. "Facility" means buildings, structures, or systems, including those for essential administration and support, which are used to provide residential treatment for children.
  12. "Host county" means the county within the human service zone in which the human service zone administrative office is located and in which the human service zone team members are employed.
  13. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department of health and human services.
  14. "Individual justice planning" means a process to identify, accommodate, and develop appropriate consequences for behaviors caused by or related to an individual's mental or cognitive impairment.
  15. "Juvenile court" means the district court of this state.
  - ~~45-16.~~ "Juvenile drug court" means a program established by the supreme court which is a post-petition or post-adjudication program aimed at intervening in substance use disorders through intense supervision and participation in recovery services.
  - ~~46-17.~~ "Proceeding" means any hearing conducted before a juvenile court or a referral for service.
  - ~~47-18.~~ "Qualified residential treatment program" means a licensed or approved residence providing an out-of-home treatment placement for children, including a trauma-informed model.
  - ~~48-19.~~ "Relative" means:

- a. The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt, uncle, great-uncle, nephew, niece, or first cousin;
- b. An individual with a relationship to the child, derived through a current or former spouse of the child's parent, similar to a relationship described in subdivision a;
- c. An individual recognized in the child's community as having a relationship with the child similar to a relationship described in subdivision a; or
- d. The child's stepparent.

~~19-20.~~ "Restorative justice" means a system of justice which focuses on the rehabilitation of offenders through reconciliation with victims and the community at large.

~~20-21.~~ "Shelter care" means temporary care of a child in physically unrestricted facilities.

~~21-22.~~ "The court" means the district courts as designated by the North Dakota supreme court which includes juvenile court as a subset of district court.

~~22-23.~~ "Willfully" has the meaning provided in section 12.1-02-02.

<sup>176</sup> **SECTION 2.** A new subdivision to subsection 1 of section 27-20.2-05 of the North Dakota Century Code is created and enacted as follows:

Make a referral for the child's participation in the individual justice planning process.

Approved April 11, 2023

Filed April 12, 2023

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<sup>176</sup> Section 27-20.2-05 was also amended by section 7 of House Bill No. 1137, chapter 294.

## CHAPTER 296

### HOUSE BILL NO. 1160

(Representatives Roers Jones, Klemin, Satrom)  
(Senators Hogue, Larson, Sickler)

AN ACT to create and enact a new subsection to section 54-23.3-04 of the North Dakota Century Code, relating to the duties of the director of the department of corrections and rehabilitation; to amend and reenact subsection 4 of section 27-20.4-01, subsection 3 of section 27-20.4-17, subsections 1 and 8 of section 27-20.4-18, section 27-20.4-21, and section 27-20.4-23 of the North Dakota Century Code, relating to delinquent children; and to declare an emergency.

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

<sup>177</sup> **SECTION 1. AMENDMENT.** Subsection 4 of section 27-20.4-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Child" means an individual who is:
  - a. Under the age of eighteen years and is not married; or
  - b. ~~Under the age of twenty~~ Eighteen years ~~of age or older~~ with respect to a delinquent act committed while under the age of eighteen years and not married, unless an offense is transferred under section 27-20.4-21.

<sup>178</sup> **SECTION 2. AMENDMENT.** Subsection 3 of section 27-20.4-17 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~If the court cannot find a less restrictive alternative, the~~The court may commit a child to the division of juvenile services. ~~A risk and needs assessment must be the basis for the determination of commitment to the division of juvenile services. The court only may commit a child to the division for a new delinquent offense. Unless all probation extensions have been exhausted, the child's risk and treatment needs continue to be high and the child is refusing to comply with the terms of probation, the court may not commit a child for a violation of the terms of probation, or may order a child over eighteen years of age to serve a term of probation under the supervision of the department of corrections and rehabilitation.~~

<sup>179</sup> **SECTION 3. AMENDMENT.** Subsections 1 and 8 of section 27-20.4-18 of the North Dakota Century Code are amended and reenacted as follows:

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<sup>177</sup> Section 27-20.4-01 was also amended by section 26 of House Bill No. 1137, chapter 294.

<sup>178</sup> Section 27-20.4-17 was also amended by section 37 of House Bill No. 1137, chapter 294.

<sup>179</sup> Section 27-20.4-18 was also amended by section 38 of House Bill No. 1137, chapter 294.

1. A probation order entered by the court must place the child under the supervision of the director, unless the child is over eighteen years of age and the child's risk and needs require supervision by the department of corrections and rehabilitation under subsection 1 of section 27-20.4-15.
8. The director or assigned probation court officer may request two extensions up to four months each ~~or one extension up to four months for intensive supervised probation programs~~ for failure to comply or meet the treatment goals of the court order and case plan.

**SECTION 4. AMENDMENT.** Section 27-20.4-21 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.4-21. Transfer to other courts.**

1. After a petition has been filed alleging delinquency based on conduct that is designated a crime or public offense under the laws, including local ordinances or resolutions of this state, the court before hearing the petition on the merits shall transfer the offense for prosecution to the appropriate court having jurisdiction of the offense if:
  - a. The child is over sixteen years of age and requests the transfer;
  - b. The child was fourteen years of age or more at the time of the alleged conduct and the court determines that there is probable cause to believe the child committed the alleged delinquent act and the delinquent act involves the offense of murder or attempted murder; gross sexual imposition or the attempted gross sexual imposition of a victim by force or by threat of imminent death, serious bodily injury, or kidnapping; or
  - c.
    - (1) The child was fourteen or more years of age at the time of the alleged conduct;
    - (2) A hearing on whether the transfer should be made is held in conformity with sections 27-20.2-12, 27-20.2-13, and 27-20.4-14;
    - (3) Notice in writing of the time, place, and purpose of the hearing is given to the child and the child's parents, guardian, or other custodian at least three days before the hearing; and
    - (4) The court finds that there are reasonable grounds to believe:
      - (a) The child committed the delinquent act alleged;
      - (b) The child is not amenable to treatment or rehabilitation as a child through available programs;
      - (c) The child is not treatable in an institution for individuals who are intellectually disabled or who are mentally ill;
      - (d) The interests of the community require that the child be placed under legal restraint or discipline; and
      - (e) If the child is fourteen or fifteen years old, the child committed a delinquent act involving the infliction or threat of serious bodily harm.

2. The burden of proving reasonable grounds to believe that a child is amenable to treatment or rehabilitation as a child through available programs is on the child ~~in those cases in which:~~
  - a. If the alleged delinquent act involves the offense of manslaughter, aggravated assault, robbery, arson involving an inhabited structure, or escape involving the use of a firearm, destructive device, or other dangerous weapon ~~or in cases in which;~~
  - b. If the alleged delinquent act involves an offense that if committed by an adult would be a felony and the child has two or more previous delinquency adjudications for offenses that would be a felony if committed by an adult; ~~or~~
  - c. If the child is twenty-five years of age or older.
3. In determining a child's amenability to treatment and rehabilitation, the court shall consider and make specific findings on the following factors:
  - a. Age;
  - b. Mental capacity;
  - c. Maturity;
  - d. Degree of criminal sophistication exhibited;
  - e. Previous record;
  - f. Success or failure of previous attempts to rehabilitate;
  - g. Whether the child can be rehabilitated before expiration of juvenile court jurisdiction;
  - h. Any psychological, probation, or institutional reports;
    - i. The nature and circumstances of the acts for which the transfer is sought;
    - j. The prospect for adequate protection of the public; and
  - k. Any other relevant factors.
4. A child subject to the jurisdiction of the juvenile court, either before or after reaching eighteen years of age, may not be prosecuted for an offense previously committed unless the case has been transferred as provided in this section.
5. Statements made by the child at a hearing under this section are not admissible against the child over objection in the criminal proceedings following the transfer except for impeachment.
6. If the case is not transferred, the judge who conducted the hearing may not over objection of an interested party preside at the hearing on the petition. If the case is transferred to a court of which the judge who conducted the hearing is also a judge, the judge likewise is disqualified over objection from presiding in the prosecution.

- ~~7. An individual at least twenty years of age who committed an offense while a child and was not adjudicated for the offense in juvenile court may be prosecuted in district court as an adult, unless the state intentionally delayed the prosecution to avoid juvenile court jurisdiction. The district court has original and exclusive jurisdiction for the prosecution under this subsection.~~

**SECTION 5. AMENDMENT.** Section 27-20.4-23 of the North Dakota Century Code is amended and reenacted as follows:

**27-20.4-23. Limitations of orders of disposition.**

1. An order of disposition may not exceed twelve months from disposition unless extended by the court. The director or designee may request two extensions up to four months each for the child to complete the treatment goals of the court order and the case plan.
2. An order of disposition committing a delinquent child to the division of juvenile services may not exceed twelve months. The court may extend the order for an additional twelve-month period, if:
  - a. A hearing is held upon motion of the division, or on the court's own motion, prior to the expiration of the order;
  - b. Reasonable notice of the hearing and an opportunity to be heard are given to the child and the parent, guardian, or other custodian;
  - c. The court finds the extension is necessary for the treatment or rehabilitation of the child and has determined that such treatment cannot be provided in their home community; and
  - d. The extension does not exceed twelve months from the expiration of an order limited by subsection 3 or two years from the expiration of any other limited order.
3. Except as provided in subsection 2, an order of disposition pursuant to which a child is placed in foster care may not continue for more than twelve months after the child is considered to have entered foster care. A permanency hearing must be conducted before the extension of any court order limited under this subsection. Any other order of disposition may not continue in force for more than twelve months.
4. The court may terminate an order of disposition before the expiration of the order.
5. Except as provided in subsection 2, the court may terminate an order of disposition or extension before its expiration, on or without an application of a party, if it appears to the court the purposes of the order have been accomplished. If a party may be adversely affected by the order of termination, the order may be made only after reasonable notice and opportunity to be heard have been given to the party.
6. ~~When the child attains the age of twenty years, all orders affecting the child then in force terminate and the child is discharged from further obligation or control.~~

**SECTION 6.** A new subsection to section 54-23.3-04 of the North Dakota Century Code is created and enacted as follows:

To employ personnel and to establish policies and procedures to supervise a child when a court orders supervision and management by the department under subsection 1 of section 27-20.4-18.

**SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 12, 2023

Filed April 13, 2023



VOLUME II  
CHAPTERS 297 THROUGH 635

# LAWS

PASSED AT

**The Sixty-eighth Session**

OF THE

**Legislative Assembly**

OF THE

STATE OF NORTH DAKOTA

BEGUN AND HELD AT BISMARCK, THE CAPITAL, ON  
TUESDAY, JANUARY 3, 2023, AND  
CONCLUDING SUNDAY, APRIL 30, 2023



# **AUTHENTICATION**

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## **STATE OF NORTH DAKOTA Department of State, Bismarck**

I, Michael Howe, 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-eighth Session of the Legislative Assembly of the State of North Dakota, beginning Tuesday, January 3, 2023, and concluding Sunday, April 30, 2023.

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 2023.

(SEAL)

**MICHAEL HOWE**  
Secretary of State

John Bjornson, Jennifer S.N. Clark, and Samantha E. Kramer 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.

**JOHN BJORNSON**  
Legislative Council  
Director  
**JENNIFER S.N. CLARK**  
Code Revisor  
**SAMANTHA E. KRAMER**  
Assistant Code Revisor



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# JUDICIAL PROCEDURE, CIVIL

## CHAPTER 297

### SENATE BILL NO. 2282

(Senators Dwyer, Estenson, Vedaa)  
(Representatives Cory, O'Brien, Pyle)

AN ACT to create and enact a new section to chapter 28-01 of the North Dakota Century Code, relating to the limitation on claims for sexual assault; and to amend and reenact sections 28-01-18, 28-01-22.1, 28-01-25.1, and 32-12.1-10, and subsection 1 of section 32-12.2-04 of the North Dakota Century Code, relating to limitations on civil actions alleging sexual assault, sexual abuse, gross sexual imposition, or childhood sexual abuse, and the notice requirement for claims against the state.

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

**SECTION 1. AMENDMENT.** Section 28-01-18 of the North Dakota Century Code is amended and reenacted as follows:

##### **28-01-18. Actions having two-year limitations.**

~~The~~Except as provided in section 4 of this Act, the following actions must be commenced within two years after the claim for relief has accrued:

1. An action for libel, slander, assault, battery, or false imprisonment.
2. An action upon a statute for a forfeiture or penalty to the state.
3. An action for the recovery of damages resulting from malpractice; provided, however, that the limitation of an action against a physician or licensed hospital will not be extended beyond six years of the act or omission of alleged malpractice by a nondiscovery thereof unless discovery was prevented by the fraudulent conduct of the physician or licensed hospital. This limitation is subject to the provisions of section 28-01-25.
4. An action for injuries done to the person of another, when death ensues from such injuries, and the claim for relief must be deemed to have accrued at the time of the death of the party injured; provided, however, that when death ensues as the result of malpractice, the claim for relief is deemed to have accrued at the time of the discovery of the malpractice. However, the limitation will not be extended beyond six years of the act or omission of alleged malpractice by a nondiscovery thereof unless discovery was prevented by the fraudulent conduct of the physician or hospital.
5. An action for recovery of damages arising under chapter 5-01, and the claim for relief is deemed to have accrued at the time of the alleged

offense. This limitation does not apply to any claim for relief existing at the time of the enactment of this subsection.

**SECTION 2. AMENDMENT.** Section 28-01-22.1 of the North Dakota Century Code is amended and reenacted as follows:

**28-01-22.1. Actions against state - Limitation.**

1. When not otherwise specifically provided by law, an action against the state or its employees and officials acting within the scope of their employment or office must be commenced within three years after the claim for relief has accrued.
2. 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. This may not be construed as a waiver of immunity.
3. Notwithstanding subsections 1 and 2, an action for relief that resulted from sexual assault, sexual abuse, gross sexual imposition, or any other claim based on a sexual act or sexual contact as defined in chapter 12.1-20 must be commenced:
  - a. Within nine years after the date the act occurred; or
  - b. Within twenty-one years after the date the act occurred, if the act occurred when the plaintiff was under eighteen years of age.
4. If the plaintiff was under fifteen years of age when a claim for relief resulting from sexual assault, sexual abuse, gross sexual imposition, or any other claim based on a sexual act or sexual contact as defined in chapter 12.1-20 occurred, the applicable twenty-one year period of limitation does not begin to run until the plaintiff has reached fifteen years of age.

**SECTION 3. AMENDMENT.** Section 28-01-25.1 of the North Dakota Century Code is amended and reenacted as follows:

**28-01-25.1. Limitation on actions alleging childhood sexual abuse.**

1. Notwithstanding section 28-01-25, a claim for relief resulting from childhood sexual abuse must be commenced within ~~twenty-one~~ years after the plaintiff ~~knew or reasonably should have known that a potential claim exists~~ resulting from alleged childhood sexual abuse accrued.
2. If the plaintiff was under fifteen years of age when the act resulting in a potential claim for childhood sexual abuse occurred, the applicable twenty-one year period of limitation does not begin to run until the plaintiff has reached fifteen years of age.
3. For purposes of this section, "childhood sexual abuse" means any act committed by the defendant against the plaintiff which occurred when the plaintiff was under eighteen years of age and which would have been a violation of chapter 12.1-20 or 12.1-27.2.
4. In a claim for relief under this section, the plaintiff is not required to establish which act in a continuous series of sexual abuse acts by the defendant caused the injury.

**SECTION 4.** A new section to chapter 28-01 of the North Dakota Century Code is created and enacted as follows:

**Limitation on claims for sexual assault.**

A claim for relief that resulted from sexual assault, sexual abuse, gross sexual imposition, or any other claim based on a sexual act or sexual contact as defined in chapter 12.1-20 must be commenced within nine years after the date of the act.

**SECTION 5. AMENDMENT.** Section 32-12.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**32-12.1-10. Statute of limitations.**

Am

1. Except as otherwise provided in this section, an action brought under this chapter must be commenced within three years after the claim for relief has accrued.
2. An action under this chapter for relief that resulted from sexual assault, sexual abuse, gross sexual imposition, or any other claim based on a sexual act or sexual contact as defined in chapter 12.1-20 must be commenced:
  - a. Within nine years after the date the act occurred; or
  - b. Within twenty-one years after the date the act occurred, if the act occurred when the plaintiff was under eighteen years of age.
3. If the plaintiff was under fifteen years of age when a claim for relief resulting from sexual assault, sexual abuse, gross sexual imposition, or any other claim based on a sexual act or sexual contact as defined in chapter 12.1-20 occurred, the applicable twenty-one year period of limitation does not begin to run until the plaintiff has reached fifteen years of age.

**SECTION 6. AMENDMENT.** Subsection 1 of section 32-12.2-04 of the North Dakota Century Code is amended and reenacted as follows:

1.
  - a. A person bringing a claim against the state or a state employee for an injury shall present to the director of the office of management and budget within one hundred eighty days after the alleged injury is discovered or reasonably should have been discovered a written notice stating the time, place, and circumstances of the injury, the names of any state employees known to be involved, and the amount of compensation or other relief demanded.
  - b. The time for giving the notice does not include the time during which a person injured is incapacitated by the injury from giving the notice. If the claim is one for death, the notice may be presented by the personal representative, surviving spouse, or next of kin within one year after the alleged injury resulting in the death.
  - c. The time for giving the notice is waived for a claim for relief that resulted from sexual assault, sexual abuse, gross sexual imposition, or any other claim based on a sexual act or sexual contact as defined in chapter 12.1-20.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 298

### HOUSE BILL NO. 1291

(Representative Dockter)

AN ACT to amend and reenact section 28-21-01 of the North Dakota Century Code, relating to execution of a 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~~twenty years.**

A judgment creditor or the party's duly appointed personal representatives at any time within ~~ten~~twenty years after the entry of judgment may proceed to enforce the 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.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 299

### SENATE BILL NO. 2206

(Senators Piepkorn, Klein, Weber)  
(Representatives Louser, Mitskog, Ostlie)

AN ACT to amend and reenact sections 28-22-03.1, 47-18-01, 47-18-04, and 47-18-14 of the North Dakota Century Code, relating to insurance cash value exemptions and homestead exemption.

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

**SECTION 1. 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 ~~ten~~twenty-five thousand 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 ~~twenty~~ thousand ~~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~~thirty-five 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. The debtor's aggregate interest, not to exceed ~~one~~ten 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 unmaturred 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~~one hundred 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 unmaturred life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent. Any cash deposit not previously scheduled to be made into a life insurance policy or nonqualified annuity over the previous twelve months is not exempt. Benefits are not exempt from enforcement of any order to pay spousal support, child support, or a qualified domestic order under sections 15-39.1-12.2, 39-03-14.2, and 54-52-17.6.

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~~two hundred thousand dollars for any one account or ~~two~~four 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. 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.
8. The debtor's right to receive:
  - a. A social security benefit, except that the benefit is not exempt for enforcement of any order for the support of a dependent child.
  - 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 2. 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 individual, whether married or unmarried, residing in this state 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 one hundred fifty 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. The homestead may not embrace different lots or tracts of land unless 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.

**SECTION 3. 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 the homestead is more than one hundred fifty thousand dollars over and above liens or encumbrances on the homestead, and then only to the extent of any value in excess of the sum total of the liens and encumbrances plus said one hundred fifty thousand dollars.

**SECTION 4. 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 one hundred fifty 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.

Approved April 26, 2023

Filed April 26, 2023

## CHAPTER 300

### HOUSE BILL NO. 1055

(Government and Veterans Affairs Committee)  
(At the request of the Office of Management and Budget)

AN ACT to amend and reenact subdivision a of subsection 2 of section 28-32-01 and section 32-12.2-14 of the North Dakota Century Code, relating to the administrative practices act and review of accidents involving state-owned or state-leased motor vehicles.

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

**SECTION 1. AMENDMENT.** Subdivision a of subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

- a. The office of management and budget except with respect to rules ~~made under section 32-12.2-14,~~ rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.

**SECTION 2. AMENDMENT.** Section 32-12.2-14 of the North Dakota Century Code is amended and reenacted as follows:

#### **32-12.2-14. Risk management motor vehicle accident~~crash~~ review board~~—~~ Powers—Records—Meetings.**

~~The director of the office of management and budget shall establish a risk management motor vehicle accident review board to review any accident involving a motor vehicle owned or leased by the state and operated by a state employee that results in bodily injury or significant property damage. The board is composed of the director of the department of transportation, or the director's designee, who shall serve as chairman of the board; the director of the office of management and budget, or the director's designee; the superintendent of the highway patrol or the superintendent's designee; and two state employees selected by the other board members to serve two-year terms.~~

~~The risk management motor vehicle accident review board shall review accidents involving state-owned or state-leased vehicles operated by state employees that result in bodily injury or significant property damage in order to improve traffic safety and driver training and to reduce the number of traffic accidents. The board shall adopt rules concerning receiving accident reports, holding meetings, receiving verbal or written information, making recommendations, communicating with state agencies and employees, and informing state agencies of its recommendations. Three members of the board constitute a quorum and an affirmative vote of at least three board members is required for the board to take action and make a recommendation.~~

~~The duties of the chairman include scheduling meetings; notifying participants; receiving and maintaining board records, reports, and other material; and communicating with agencies concerning the board's recommendations.~~

~~The department of transportation shall report state motor vehicle-related accidents to the board for review involving bodily injury or significant property damage or if there was a citation issued to the state employee operating the state-owned or state-leased motor vehicle. After review, the board may recommend driver training; defensive driver training; emergency vehicle operational training; physical, written, or operational examinations; or restrictions on the use of state-owned or state-leased motor vehicles. The state agency employing the employee operating the state-owned or state-leased motor vehicle involved in the traffic accident shall decide whether to implement the board's recommendation.~~

~~State employees must be paid and may not be required to take any leave for time needed to assist the board, and all state employers shall reimburse their employees for travel expenses incurred in assisting the board.~~

~~The board must be deemed to be a state agency loss control committee under section 32-12.2-12 and all of the board's current or former members and all participants providing any verbal or written information to the board are entitled to the rights against production of records or testimony as contained in this section.~~

~~The department of transportation shall internally review all accidents involving a motor vehicle owned or leased by the state that is not submitted to the board for review to determine whether the accident was preventable and make recommendations to the agency employing the employee involved in the accident which may include recommendations on the same issues as made by the board. The department may defer to the determinations and recommendations of an agency loss control committee approved by the board. An employee may request further review by the board of any determination or recommendation of the department.~~The department of transportation, in consultation with the risk management division, shall review all motor vehicle crashes or incidents in which a state employee is issued a traffic citation involving a state-owned or state-leased motor vehicle for purposes of making a remedial recommendation to the agency employing the individual involved, as appropriate, and identifying crash and other trends. The department may defer to the determination and recommendation of an agency that reviewed the crash through an established loss control committee. In cases of repeated crashes, citations, or accidents involving substantial property damage or personal injury, or traffic violations for which there is a criminal penalty, the department may revoke, suspend, or restrict the ability to drive a state-owned or state-leased vehicle.

Approved March 14, 2023

Filed March 15, 2023



# JUDICIAL PROCEDURE, CRIMINAL

## CHAPTER 301

### HOUSE BILL NO. 1145

(Representatives Schauer, Boschee, O'Brien, Schneider, Swiontek, Wagner, Warrey,  
Weisz)  
(Senators Hogan, K. Roers, Weber)

AN ACT to amend and reenact section 29-04-02.1 of the North Dakota Century Code, relating to prosecution for gross sexual imposition; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 29-04-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**29-04-02.1. Prosecution for ~~gross sexual imposition~~ a felony sexual offense or human trafficking.**

Except as otherwise provided by law, a prosecution for a felony violation of ~~subdivision a of subsection 1 of section 12.1-20-03~~chapter 12.1-20 or for the crime of human trafficking must be commenced in the proper court within seven years after the commission of the offense.

Approved March 29, 2023

Filed March 30, 2023

## CHAPTER 302

### SENATE BILL NO. 2286

(Senators Schaible, Kessel)  
(Representatives Heinert, Rohr)

AN ACT to create and enact a new section to chapter 29-06 of the North Dakota Century Code, relating to peace officers acting outside their jurisdiction; and to amend and reenact sections 11-15-03, 25-03.1-25, and 40-20-05 of the North Dakota Century Code, relating to duties of the sheriff, powers and duties of the chief of police and police officers, and detentions.

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

**SECTION 1. AMENDMENT.** Section 11-15-03 of the North Dakota Century Code is amended and reenacted as follows:

##### **11-15-03. Duties of sheriff.**

1. The sheriff shall:
  1. a. Preserve the peace.
  2. b. Arrest and take before the nearest magistrate, or before the magistrate who issued the warrant, all persons who attempt to commit or who have committed a public offense.
  3. c. Prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to the sheriff's knowledge.
  4. d. Attend each term of the district court held within the county; obey its lawful orders and directions; and act as crier thereof and make proclamation of the opening and adjournment of court and of any other matter under its direction.
  5. e. Command the aid of as many inhabitants of the county as the sheriff may think necessary in the execution of the sheriff's duties.
  6. f. Take charge of and keep the county jail and the prisoners therein.
  7. g. Endorse upon all notices and process received by the sheriff for service the year, month, day, hour, and minute of reception, and issue therefor to the person delivering it, on payment of the sheriff's fees, a certificate showing the names of the parties, the title of the paper, and the time of its reception.
  8. h. Serve all process or notices in the manner prescribed by law.
  9. i. Certify under the sheriff's hand upon each process or notice the time and manner of service, or if the sheriff fails to make service, the reasons for failure, and return the same without delay.

10. j. Perform such other duties as are required of the sheriff by law.
11. k. Enforce, personally or through deputies, all statutes defining traffic violations denominated noncriminal by section 39-06.1-02.
2. The sheriff maintains the powers under subsection 1 throughout the entire state during a transport or detention under section 3 of this Act.

**SECTION 2. 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 either in person or directing an emergency medical services professional, psychiatrist, physician assistant, psychologist, advanced practice registered nurse, 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 individual, others, or property of an immediate nature that considerations of safety do not allow preliminary intervention by a magistrate, the peace officer, physician either in person or directing an emergency medical services professional, psychiatrist, physician assistant, psychologist, advanced practice registered nurse, or mental health professional, using the screening process set forth in section 25-03.1-04, may cause the individual 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, others, 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 individual must be advised of the purpose of custody, of the intended uses and possible effects of any evaluation that the individual undergoes, and of the individual's rights to counsel and to a preliminary or treatment hearing.
5. Upon arrival at a facility the peace officer, physician, physician assistant, psychiatrist, psychologist, advanced practice registered nurse, or mental health professional who conveyed the individual or who caused the individual to be conveyed shall complete an application for evaluation and shall deliver a detailed written report from the peace officer, physician, physician assistant, psychiatrist, psychologist, advanced practice registered nurse, or the mental health professional who caused the individual to be conveyed. The written report must state the circumstances under which the individual 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 individual's condition, there exists a serious risk of harm to that individual, others, or property if the individual is not immediately detained.
6. A peace officer maintains the peace officer's power of arrest, detention, and transport, throughout the entire state during a transport or detention in accordance with this section.

**SECTION 3.** A new section to chapter 29-06 of the North Dakota Century Code is created and enacted as follows:

**Peace officers acting outside geographic jurisdiction.**

1. As used in this section, "peace officer" means a salaried public servant employed by a criminal justice agency of the state or a political subdivision to enforce the law or to conduct or engage in investigations or prosecutions for violations of law.
2. If a peace officer is transporting an individual who is under arrest or is being detained under chapter 25-03.1, the peace officer's authority extends throughout the entire state, as follows:
  - a. After arrest, until the individual is delivered into the custody of the nearest jail, regional corrections center, or correctional facility as defined by chapter 12-44.1, including while the individual is being treated for a medical condition or infirmity;
  - b. While an individual is being detained during pretrial, in any jail, regional corrections center, or correctional facility and, is being transported for treatment for a medical condition or other physical or mental infirmity that occurred while the individual was in custody;
  - c. While the peace officer is detaining an individual under chapter 25-03.1 and the individual is being transported to a treatment facility for evaluation or treatment;

- d. While the peace officer is detaining or transporting an individual pursuant to an order issued by the district court; and
- e. While the peace officer is transporting an individual convicted under chapter 12.1-32 to a jail, regional corrections center, or correctional facility to serve a term of confinement as ordered by the district court.

**SECTION 4. AMENDMENT.** Section 40-20-05 of the North Dakota Century Code is amended and reenacted as follows:

**40-20-05. Chief of police and police officers - Powers and duties - Hot pursuit.**

1. The chief of police shall perform duties prescribed by the governing body for the preservation of the peace. The chief of police may administer oaths to police officers under the chief's supervision. Within the city limits, and for a distance of one and one-half miles [2.41 kilometers] in all directions outside the city limits, the police officers of the city shall perform the duties and exercise the powers of peace officers as defined and prescribed by the laws of this state.
2. A police officer in "hot pursuit" may continue beyond the one and one-half mile [2.41 kilometers] limit to make an arrest, in obedience to a warrant or without a warrant under the conditions of section 29-06-15, if obtaining the aid of peace officers having jurisdiction beyond that limit would cause a delay permitting escape. As used in this subsection, "hot pursuit" means the immediate pursuit of an individual endeavoring to avoid arrest. The jurisdiction limits in subsection 1 do not apply to a police officer acting pursuant to a joint powers agreement with another jurisdiction.
3. Police officers shall serve and execute any warrant, writ, process, order, or notice issued by a municipal judge within the city in any civil or criminal action or proceeding for or on account of a violation of any city ordinance or in any action or proceeding in which the city is a party or is interested beneficially. The police, within the limits prescribed in this section, may serve and execute all writs and process issued by justices in civil actions. In addition to the duties set out in this section, the police shall perform such other duties as may be prescribed by ordinance or statute.
4. A police officer maintains the powers under this section throughout the entire state during a transport or detention under section 3 of this Act.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 303

### HOUSE BILL NO. 1453

(Representatives Schneider, Bahl, Conmy, Hanson, Klemin, Roers Jones, Satrom)  
(Senators Braunberger, Dwyer, Mathern)

AN ACT to create and enact a new section to chapter 29-08 of the North Dakota Century Code, relating to a uniform bail schedule initiative; and to provide for a legislative management report.

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

**SECTION 1.** A new section to chapter 29-08 of the North Dakota Century Code is created and enacted as follows:

##### **Supreme court uniform bail schedule initiative - Report.**

1. The supreme court shall establish a uniform bail schedule to apply when an individual has been taken into custody and has not yet appeared before the district court for a violation of a state offense to achieve substantial uniformity of bail in district court.
2. The uniform bail schedule must be established in cooperation with the district court.
3. When establishing the uniform bail schedule, the supreme court shall consider the following factors when setting the standard amount of bail:
  - a. Maintaining public safety;
  - b. The severity of the offense justifying the bail amount;
  - c. The need to assure defendants appear for court hearings;
  - d. Equal treatment within the judicial system;
  - e. Constitutional limits and requirements related to bail;
  - f. Prohibiting excessive bail; and
  - g. Any other factors considered by the supreme court to be relevant.
4. The supreme court may adjust the standard bail amounts established by the uniform bail schedule as needed or when requested by the district court.
5. The uniform bail schedule must be implemented by August 1, 2024.
6. Before September 1, 2024, the supreme court shall provide a report to the legislative management regarding the implementation of the uniform bail schedule and the standard amount of bail for each state offense.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 304

### SENATE BILL NO. 2106

(Judiciary Committee)  
(At the request of the Supreme Court)

AN ACT to repeal sections 29-16-01, 29-21-16, and 29-22-33 of the North Dakota Century Code relating to issues of fact, plea of once in jeopardy, and special verdicts.

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

**SECTION 1. REPEAL.** Sections 29-16-01, 29-21-16, and 29-22-33 of the North Dakota Century Code are repealed.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 305

### HOUSE BILL NO. 1289

(Representatives Roers Jones, Bahl, Ista, Klemin, Rios, Satrom, Schneider)  
(Senators Hogue, Larson)

AN ACT to create and enact a new subsection to section 29-26-22 of the North Dakota Century Code, relating to waiver of fines, fees, and costs upon successful completion of an approved adult drug court program; to provide for retroactive application; and to declare an emergency.

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

**SECTION 1.** A new subsection to section 29-26-22 of the North Dakota Century Code is created and enacted as follows:

Upon successful completion of an approved adult drug court program, a court may waive all unpaid fines, fees, and costs imposed in the criminal judgment sentencing the defendant to the drug court program, except for restitution. For purposes of this subsection, "approved drug court program" means a district court-supervised treatment program approved by the supreme court.

**SECTION 2. RETROACTIVE APPLICATION.** This Act applies retroactively to an offense committed before the effective date of this Act, but only for a defendant who successfully completes an approved drug court program after the effective date of this Act.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 306

### SENATE BILL NO. 2043

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

AN ACT to create and enact section 29-29.1-01.1 of the North Dakota Century Code, relating to a warrant for electronic communication information; to amend and reenact subsection 1 of section 29-29.1-02, subsection 1 of section 29-29.1-03, and section 29-29.1-04 of the North Dakota Century Code, relating to requirements for valid issuance and to warrant validity days.

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

**SECTION 1.** Section 29-29.1-01.1 of the North Dakota Century Code is created and enacted as follows:

**29-29.1-01.1. Warrant for electronic communication information.**

1. As used in this section, "Electronic communication information" means any information about an electronic communication or the use of an electronic communication service, limited to the contents of electronic communications and precise or approximate location of the target sender or target recipient at any point during the communication.
2. Notwithstanding chapter 29-29, any official or employee of the state or of a unit of county or local government of the state may, under the conditions specified in this section, obtain a warrant requiring disclosure of electronic communication information.
3. A warrant issued under this section may authorize the seizure of electronic storage media or the seizure or copying of electronically stored information. Unless otherwise specified, the warrant authorizes a later review of the media or information consistent with the warrant.
4. Under this section, the time for executing the warrant refers to the seizure or onsite copying of the media or information, and not to any later offsite copying or review.
5. The issuing magistrate may grant an extension of a warrant on the owner or the possessor of electronic communication information upon an application under oath stating the owner or the possessor has not produced the requested electronic communication information within ten days and that an extension is necessary to achieve the purposes for which the search warrant was granted. An extension may not exceed thirty days.

**SECTION 2. AMENDMENT.** Subsection 1 of section 29-29.1-02 of the North Dakota Century Code is amended and reenacted as follows:

1. The one seeking the warrant shall establish under oath or affirmation that the property or electronic communication information to be searched or inspected is to be searched or inspected as a part of a legally authorized program of

inspection which naturally includes that property or electronic communication information, or that there is probable cause for believing that there is a condition, object, activity, or circumstance which legally justifies such a search or inspection of that property or electronic communication information;

**SECTION 3. AMENDMENT.** Subsection 1 of section 29-29.1-03 of the North Dakota Century Code is amended and reenacted as follows:

1. It must be signed by the issuing magistrate and must bear the date and hour of its issuance above the magistrate's signature with a notation that the warrant is valid for only ~~twenty-four hours~~ ten days following its issuance;

**SECTION 4. AMENDMENT.** Section 29-29.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**29-29.1-04. Warrant valid for ~~twenty-four hours~~ ten days.**

Any warrant issued under this chapter for a search or inspection is valid for only ~~twenty-four hours~~ ten days after its issuance, must be personally served upon an owner or possessor of the property, or upon any person present on the premises if an owner or possessor cannot reasonably be found between the hours of 8:00 a.m. and 8:00 p.m., and must be returned within forty-eight hours of service except as provided in section 29-29.1-01.1.

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 307

### HOUSE BILL NO. 1087

(Judiciary Committee)  
(At the request of the Supreme Court)

AN ACT to create and enact a new section to chapter 29-32.1 of the North Dakota Century Code, relating to summary disposition; and to amend and reenact section 29-32.1-09 of the North Dakota Century Code, relating to summary disposition and dismissal.

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

**SECTION 1. AMENDMENT.** Section 29-32.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**29-32.1-09. Summary disposition~~and dismissal~~.**

1. The court, on its own motion, may enter a judgment denying a meritless application on any and all issues raised in the application before any response by the state. The court also may summarily deny a second or successive application for similar relief on behalf of the same applicant and may summarily deny any application when the issues raised in the application have previously been decided by the appellate court in the same case.
2. The court, on its own motion, may dismiss any grounds of an application which allege ineffective assistance of postconviction counsel. An applicant may not claim constitutionally ineffective assistance of postconviction counsel in proceedings under this chapter.
3. ~~The court may grant a motion by either party for summary disposition if the application, pleadings, any previous proceeding, discovery, or other matters of record show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.~~
4. ~~If an evidentiary hearing is necessary, the court may determine which issues of material fact are in controversy and appropriately restrict the hearing.~~

**SECTION 2.** A new section to chapter 29-32.1 of the North Dakota Century Code is created and enacted as follows:

**Summary disposition.**

1. The court may grant a motion by either party for summary disposition if the application, pleadings, any previous proceeding, discovery, or other matters of record show that no genuine issues exist as to any material fact and the moving party is entitled to judgment as a matter of law.
2. If an evidentiary hearing is necessary, the court may determine which issues of material fact are in controversy and appropriately restrict the hearing.

Approved March 14, 2023

Filed March 15, 2023



# UNIFORM PROBATE CODE

## CHAPTER 308

### SENATE BILL NO. 2224

(Senators Dwyer, Lee, Sickler)  
(Representatives Klemin, Nelson, Schneider)

AN ACT to create and enact a new section to chapter 30.1-28 and a new subsection to section 30.1-28-10.1 of the North Dakota Century Code, relating to guardianship proceedings for minors becoming incapacitated adults and emergency guardianship; to amend and reenact section 27-20.1-02, subsection 1 of section 27-20.1-09, subsection 2 of section 27-20.1-17, subsection 60 of section 30.1-01-06, subsection 1 of section 30.1-26-01, subsection 2 of section 30.1-27-05, sections 30.1-28-03, 30.1-28-04, and 30.1-28-07, subsection 2 of section 30.1-28-09, and subsection 7 of section 30.1-28-12 of the North Dakota Century Code, relating to guardianship of minors, sale of property by a guardian, termination of a guardianship, waiver of notice, and guardians ad litem.

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

**SECTION 1. AMENDMENT.** Section 27-20.1-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **27-20.1-02. Jurisdiction.**

The juvenile court has exclusive original jurisdiction of proceedings to grant, modify, or terminate guardianship for a child, except the testamentary appointment of a guardian for a minor governed by chapter 30.1-27 and the appointment of a guardian for a minor becoming an incapacitated adult under section 7 of this Act.

<sup>180</sup> **SECTION 2. AMENDMENT.** Subsection 1 of section 27-20.1-09 of the North Dakota Century Code is amended and reenacted as follows:

1. If, at any time in the proceeding, the court determines the child is of sufficient age and competency to assist counsel and the interests of the child are or may be inadequately represented, the court may appoint an attorney to represent the child. The court shall make appropriate findings to support the appointment of counsel.

**SECTION 3. AMENDMENT.** Subsection 2 of section 27-20.1-17 of the North Dakota Century Code is amended and reenacted as follows:

2. A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian, or upon the child's death, adoption, marriage, or attainment of majority, but termination does not affect the guardian's liability for prior acts or the guardian's obligation to account for

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<sup>180</sup> Section 27-20.1-09 was also amended by section 4 of House Bill No. 1137, chapter 294.

funds and assets of the child. ~~For cases arising under section 27-20.3-16, the age of majority is age twenty-one.~~

**SECTION 4. AMENDMENT.** Subsection 60 of section 30.1-01-06 of the North Dakota Century Code is amended and reenacted as follows:

60. "Visitor" means an individual, in guardianship proceedings, who is trained in nursing or social work, medical care, mental health care, or rehabilitation and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

<sup>181</sup> **SECTION 5. AMENDMENT.** Subsection 1 of section 30.1-26-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Alternative resource plan" means a plan that provides an alternative to guardianship, using available support services and arrangements which are acceptable to the alleged incapacitated person. The plan may include the use of providers of service such as visiting nurses, homemakers, home health aides, personal care attendants, and adult day care and multipurpose senior citizen centers; home and community-based care, human service zones, and developmental disability services; powers of attorney, durable powers of attorney, health care directives, and supported decisionmaking; representative and protective payees; and licensed congregate care facilities.

**SECTION 6. AMENDMENT.** Subsection 2 of section 30.1-27-05 of the North Dakota Century Code is amended and reenacted as follows:

2. The juvenile court under chapter 27-20.1 has exclusive original jurisdiction over proceedings to consider objections to the testamentary appointment under section 30.1-27-07 and over the court appointment of a guardian of a minor except the appointment of a guardian for a minor becoming an incapacitated adult under section 7 of this Act. Any person interested in the welfare of a minor may petition the juvenile court for the appointment of a guardian under section 27-20.1-05 in the following situations:
- If there is a living parent of the minor, known or unknown;
  - If the testamentary guardian fails to accept appointment as guardian within sixty days after the death of the minor's last living parent;
  - If both parents are dead or the surviving parent's rights have been terminated by prior court order, but there has been no appointment of a guardian for the minor by will; or
  - If a guardianship of a minor is sought for any other reason.

**SECTION 7.** A new section to chapter 30.1-28 of the North Dakota Century Code is created and enacted as follows:

**Guardianship proceedings for minor becoming an incapacitated adult.**

1. As used in this section:

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<sup>181</sup> Section 30.1-26-01 was also amended by section 2 of Senate Bill No. 2225, chapter 310.

- a. "Legal decisionmaking" means the legal right and responsibility to make all legal decisions for a child including those regarding education, health care, and personal care decisions.
  - b. "Child" means an individual who is under the age of eighteen and is not married.
  - c. "Child becoming an incapacitated adult" means a child who has reached age seventeen years and six months and is proposed to become an incapacitated adult at age eighteen.
2. A petition to establish a guardianship for a child becoming an incapacitated adult may be filed by any person interested in the welfare of the child and having knowledge of the facts alleged or information and belief the facts are true.
  3. The procedure in this chapter for appointment of a guardian of an incapacitated adult must be the procedure used for appointment of a guardian for a child becoming an incapacitated adult except the court shall appoint as the guardian any person that had legal decisionmaking responsibility for the child when the child turned seventeen years and six months of age. If the court finds the appointment of the person with legal decisionmaking authority would be contrary to the best interests of the incapacitated adult, the priorities listed in section 30.1-28-11 may be followed.
  4. A guardianship order under this section may take effect immediately on the day the child turns eighteen years of age.

<sup>182</sup> **SECTION 8. AMENDMENT.** Section 30.1-28-03 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-28-03. (5-303) Procedure for court appointment of a guardian of an incapacitated person.**

1. Any person interested in the welfare of an allegedly incapacitated person may petition for the appointment of a guardian. No filing fee under this or any other section may be required when a petition for guardianship of an incapacitated person is filed by a member of the individual treatment plan team for the alleged incapacitated person or by any state employee in the performance of official duties.
2. The petition for appointment of a guardian must state:
  - a. The name, address, and corporate or agency status of the petitioner, and its connection with or relationship to the proposed ward;
  - b. The name, age, and address of the proposed ward;
  - c. The name and address of any person or institution having care or custody over the proposed ward;

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<sup>182</sup> Section 30.1-28-03 was also amended by section 3 of Senate Bill No. 2225, chapter 310.

- d. The names and addresses of the spouse, parents, and adult children or, if none, any adult siblings and any adult with whom the proposed ward resides in a private residence, or, if none, the nearest adult relative;
  - e. A brief description of and the approximate value of the real and personal property and income of the proposed ward, so far as they are known to the petitioner;
  - f. The extent of guardianship authority sought, including full authority, limited authority, or no authority in each area of residential, educational, medical, legal, vocational, and financial decisionmaking unless the petitioner is undecided on the extent of authority in any area, in which case the petition must state the specific areas in which the authority is sought;
  - g. The occupation and qualifications of the proposed guardian;
  - h. The name and address of the attorney, if known, who most recently represented the proposed ward;
  - i. A statement alleging specific facts establishing the necessity for the appointment of a guardian;
  - j. The name and address of any current conservator appointed for the proposed ward;
  - k. The name and address of any person designated as an attorney in fact or agent in a power of attorney or as an agent in a health care directive;
  - l. The name and address of any representative payee for the proposed ward;
  - m. That less intrusive alternatives to guardianship have been considered;
  - n. In the form of an attached recent statement, the physical, mental, and emotional limitations of the proposed ward from an expert examiner, if available; and
  - o. Whether the petition seeks to restrict any of the following rights:
    - (1) To vote;
    - (2) To seek to change marital status; or
    - (3) To obtain or retain a motor vehicle operator's license.
3. Upon the filing of a petition, the court promptly shall set a date for hearing on the issues of incapacity, appoint an attorney to act as guardian ad litem, appoint an expert examiner to examine the proposed ward, and appoint a visitor to interview the proposed guardian and the proposed ward. The proposed guardian shall attend the hearing on the petition unless excused by the court for good cause.
  4. The duties of the guardian ad litem include:
    - a. Personally interviewing the proposed ward;

- b. Explaining the guardianship proceeding to the proposed ward in the language, mode of communication, and terms that the proposed ward is most likely to understand, including the nature and possible consequences of the proceeding, the right to which the proposed ward is entitled, and the legal options that are available, including the right to retain an attorney to represent the proposed ward;
  - c. Advocating for the best interests of the proposed ward. The appointed attorney serving as legal guardian ad litem may not represent the proposed ward or ward in a legal capacity;
  - d. Submitting a written report to the court containing the guardian ad litem's response to the petition and an assessment of the proposed ward's ability to attend the hearing either in person or by remote means; and
  - e. Reviewing the visitor's written report submitted in accordance with subdivision h and i of subsection 6 and discussing the report with the proposed ward.
5. The expert examiner shall examine the proposed ward and submit a written report to the court. The written report must contain:
- a. A description of the nature and degree of any current incapacity or disability, including the medical or psychological history, if reasonably available;
  - b. A medical prognosis or psychological evaluation specifying the estimated severity and duration of any current incapacity or disability;
  - c. A statement as to how or in what manner any underlying condition of physical or mental health affects the proposed ward's ability to provide for personal needs; and
  - d. A statement as to whether any current medication or physical or mental condition affects the demeanor of the proposed ward or the ability of the proposed ward to attend and participate fully in any court proceeding or in any other procedure required by the court or by court rule.
6. The visitor shall have the following duties:
- a. To meet, interview, and consult with the proposed ward regarding the guardianship proceeding, including explaining the purpose for the interview in a manner the proposed ward can reasonably be expected to understand.
  - b. To ascertain the proposed ward's views concerning the proposed guardian, the powers and duties of the proposed guardian, the proposed guardianship, and the scope and duration thereof.
  - c. To interview the person seeking appointment as guardian.
  - d. To interview other persons interested in the welfare of the proposed ward.
  - e. To visit the proposed ward's present place of residence.

- f. To discuss an alternative resource plan with the proposed ward, if appropriate.
- g. To obtain other relevant information as directed by the court.
- h. To submit a written report to the court.
- i. The visitor's written report must contain:
  - (1) A description of the nature and degree of any current impairment of the proposed ward's understanding or capacity to make or communicate decisions;
  - (2) A statement of the qualifications and appropriateness of the proposed guardian and a recommendation regarding whether the proposed guardian should be appointed;
  - (3) If the visitor recommends the proposed guardian should not be appointed, a recommendation regarding an alternative individual or entity that should be appointed as guardian;
  - (4) Recommendations, if any, on the powers to be granted to the proposed guardian, including an evaluation of the proposed ward's capacity to perform the functions enumerated under subsections 3 and 4 of section 30.1-28-04; and
  - (5) An assessment of the capacity of the proposed ward to perform the activities of daily living; and
  - (6) An assessment of the proposed ward's ability to attend the hearing either in person or by remote means.
7. In determining whether appointment of a guardian is appropriate, the court shall consider the reports ordered by the court under this section from a guardian ad litem, visitor, and an expert examiner. The court, guardian ad litem, petitioner, or proposed ward may subpoena the individual who prepared and submitted the report to appear, testify, and be cross-examined.
8. The proposed ward must be present at the hearing in person or by remote means, unless good cause is shown for the absence. Good cause does not consist only of the physical difficulty of the proposed ward to attend the hearing. The proposed ward has the right to present evidence, and to cross-examine witnesses, including the court-appointed expert examiner and the visitor. ~~The issue may be determined at a closed hearing if the proposed ward or the proposed ward's counsel so requests.~~
9. Every hearing under this chapter must be closed to the public unless the proposed ward, the ward, the attorney, or guardian ad litem of the proposed ward or ward requests it remain open. An individual or entity may request permission to observe or participate in the hearing and the request must be granted if the court determines the applicant's participation would be in the best interest of the proposed ward or ward.
10. The court shall take all necessary steps to make the courts and court proceedings accessible and understandable to impaired persons. Accordingly,

the court may convene temporarily, or for the entire proceeding, at any other location if it is in the best interest of the proposed ward.

- ~~40-11.~~ If the court ~~approves~~appoints a visitor, lawyer, or expert examiner, ~~guardian, or emergency guardian appointed~~ in a guardianship proceeding, that person may receive reasonable compensation from the ward's estate if the compensation will not unreasonably jeopardize the ward's well-being.
12. If the court approves a guardian or emergency guardian in a guardianship proceeding, that person may receive reasonable compensation and reimbursement from the ward's estate if the compensation and reimbursement will not unreasonably jeopardize the ward's well-being and estate. The court shall consider the following factors when determining what constitutes reasonable compensation and reimbursement:
- a. The size and nature of the ward's estate;
  - b. The benefit to the ward, or the ward's estate, of the guardian's services;
  - c. The necessity for the services performed;
  - d. The ward's anticipated future needs and income;
  - e. The time spent by the guardian in the performance of the services;
  - f. Whether the services were routine or required more than ordinary skill or judgment;
  - g. Any unusual skill, expertise, or experience brought to the performance of the services;
  - h. The guardian's estimate of the value of the services performed:
    - i. The fee customarily charged in the community for similar services;
    - j. The nature and length of the relationship with the ward;
  - k. The experience, reputation, diligence, and ability of the person performing the service;
  - l. Any conflict of interest the guardian may have; and
  - m. Whether the appointment as guardian precluded the guardian from other employment.
13. The court may determine the weight to be given to each factor under subsection 12, and to any other factor the court considers relevant. A separate finding is not required for each factor, but the court's findings must contain sufficient specificity to show the factual basis for the court's determination.
14. The court must approve compensation and reimbursement before payment to the guardian is made.

<sup>183</sup> **SECTION 9. AMENDMENT.** Section 30.1-28-04 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-28-04. (5-304) Findings - Order of appointment.**

1. The court shall exercise the authority conferred in this chapter consistent with the maximum self-reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's actual mental and adaptive limitations or other conditions warranting the procedure.
2. At a hearing held under this chapter, the court shall:
  - a. Hear evidence that the proposed ward is an incapacitated person. Age, eccentricity, poverty, or medical diagnosis alone is not sufficient to justify a finding of incapacity;
  - b. Hear evidence and determine whether there are any existing general durable powers of attorney and durable powers of attorney for health care. If there are validly executed durable powers of attorney, the court shall consider the appointed attorneys in fact and agents appointed thereunder when assessing alternative resource plans and the need for a guardian; and
  - c. Appoint a guardian and confer specific powers of guardianship only after finding in the record based on clear and convincing evidence that:
    - (1) The proposed ward is an incapacitated person;
    - (2) There is no available alternative resource plan that is suitable to safeguard the proposed ward's health, safety, or habilitation which could be used instead of a guardianship;
    - (3) The guardianship is necessary as the best means of providing care, supervision, or habilitation of the ward; and
    - (4) The powers and duties conferred upon the guardian are appropriate as the least restrictive form of intervention consistent with the ability of the ward for self-care.
3. Except upon specific findings of the court, a ward may not be deprived of any of the following legal rights: to vote, to seek to change marital status, or to obtain or retain a motor vehicle operator's license.
4. The court may find that the ward retains other specific rights.
5. The order appointing a guardian confers upon the guardian only those powers and duties specified in the order. In addition to any other powers conferred upon the guardian, the court's order must state whether the guardian has no authority, general authority, or limited authority to make decisions on behalf of the ward in each of the areas of residential, educational, medical, legal, vocational, and financial decisionmaking. A grant of limited authority must specify the limitations upon the authority of the guardian or the authority

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<sup>183</sup> Section 30.1-28-04 was also amended by section 4 of Senate Bill No. 2225, chapter 310.

retained by the ward. The court's order must require the guardian to provide within ninety days from the date of the order a beginning inventory of all assets owned by the ward or in which the ward has an interest. The guardian shall provide a copy of the beginning inventory to the ward and any interested persons designated by the court in its order. Unless terminated earlier by the court, an order appointing or reappointing a guardian under this section is effective for up to five years. At least ninety days before the expiration of the initial order of appointment or any following order of reappointment, the court shall request and consider information submitted by the guardian, ward, ward's attorney, if any, and any interested persons regarding whether the need for a guardian continues to exist. If it is recommended that the guardianship continue, the court may appoint a guardian ad litem or visitor, or both, in accordance with section 30.1-28-03. The court shall hold a hearing on whether the guardianship should continue. Following the hearing and consideration of submitted information, the court may reappoint the guardian for up to another five years, allow the existing order to expire, or appoint a new guardian in accordance with this section. The supreme court, by rule or order, shall provide for the regular review of guardianship in existence on August 1, 2015.

6. Unless a court of competent jurisdiction determines otherwise, a durable power of attorney for health care executed pursuant to chapter 23-06.5 takes precedence over any authority to make medical decisions granted to a guardian pursuant to chapter 30.1-28.
7. A grant of general authority to make medical decisions includes the authority to consent to involuntary treatment with prescribed medications. Except upon specific findings of the court, a grant of limited authority does not include authority to consent to involuntary treatment with prescribed medications.
8. The court may require a guardian to furnish a bond in the amount and with sureties as the court specifies.
9. After the hearing, the guardian ad litem must be discharged of the person's duties as guardian ad litem.

**SECTION 10. AMENDMENT.** Section 30.1-28-07 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-28-07. (5-307) Removal or resignation of guardian - ~~Termination~~Change in or termination of guardianship.**

1. On petition of the ward or any person interested in the ward's welfare, the court may remove a guardian and appoint a successor if in the best interests of the ward. On petition of the guardian, the court may accept the guardian's resignation and make any other order which may be appropriate.
2. The ward or any person interested in the ward's welfare may petition for an order that the ward is no longer incapacitated or no longer incapacitated to the same extent as the ward was when the original guardianship order was made or last reviewed by the court, or that the duties and authority of the guardian require modification, and for removal or resignation of the guardian, termination of the guardianship, or change in the duties and authority of the guardian. A request for this order may be made by informal letter to the court or judge. Any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.

3. Before removing a guardian, changing the guardian's duties and authority, accepting the resignation of a guardian, or on finding that the ward is no longer incapacitated, or no longer incapacitated to the same extent and ordering the guardianship terminated or modified, the court, following the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian, may send a visitor to the residence of the present guardian and to the place where the ward resides or is detained, to observe conditions and report in writing to the court.
4. A hearing must be held no later than sixty days following the filing of the petition or informal request, unless good cause is shown. Following the hearing, the court shall make written findings of fact. Before terminating or modifying the guardianship, the court shall find by a preponderance of the evidence that the ward is no longer incapacitated, no longer incapacitated to the same extent as the ward was when the original guardianship order was made or last reviewed by the court, or that it is in the best interests of the ward that the duties and authority of the guardian be modified. New letters of guardianship must be issued to the guardian in the same manner as provided in section 30.1-28-05.
5. In deciding whether to terminate or modify a guardianship, the court may require a report by and consider the recommendations of an expert examiner.
6. If the guardian dies, or if on the basis of a petition filed under this section or a report or other information, there is probable cause to believe a guardian is not performing the guardian's duties effectively and there is an imminent danger the ward's physical, mental, or emotional health or safety will be seriously impaired, the court shall take whatever action is necessary to protect the ward, including dismissal of the guardian and appointment of an emergency guardian as provided in section 30.1-28-10.1.
7. On termination of the guardianship, a guardian shall file a final report and accounting and provide a copy of the report and accounting to those given notice under section 30.1-28-09. The report and accounting must be filed with the clerk of district court. The filing of the report and accounting does not constitute the court's approval of the report and accounting. The court may approve a report and settle and allow an accounting only upon notice to the ward and other interested persons who have made an appearance or requested notice of the proceedings.

**SECTION 11. AMENDMENT.** Subsection 2 of section 30.1-28-09 of the North Dakota Century Code is amended and reenacted as follows:

2. The petitioning party, unless otherwise directed by the court, shall cause notice to be served personally on the ward or proposed ward, and the ward's or proposed ward's spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the ward or proposed ward must be given as provided in section 30.1-03-01. ~~Waiver of notice by the ward or proposed ward is not effective unless the ward or proposed ward attends the hearing or the ward's or proposed ward's waiver of notice is confirmed in an interview with the visitor.~~

**SECTION 12.** A new subsection to section 30.1-28-10.1 of the North Dakota Century Code is created and enacted as follows:

The petitioner may request the court extend the emergency order for up to an additional ninety days upon good cause shown. The request must be filed with the court at least fourteen days before the expiration of the emergency order and served on the alleged incapacitated individual, the individual's spouse, if any, and any other persons as the court directs. The court shall hold a hearing on the appropriateness of the extension within ten days of the request. No additional extensions of the emergency guardianship may be granted.

**184 SECTION 13. AMENDMENT.** Subsection 7 of section 30.1-28-12 of the North Dakota Century Code is amended and reenacted as follows:

7. If no conservator for the estate of the ward has been appointed and if the guardian has been granted authority to make financial decisions on behalf of the ward, the guardian mayshall:
  - a. Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform that duty.
  - b. Receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but, the guardian may not use funds from the ward's estate for room and board which the guardian or the guardian's spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. The guardian shall exercise care to conserve any excess for the ward's needs.
  - c. Move the court under section 30.1-28-03.2 for authority to sell, mortgage, or otherwise encumber or transfer ownership or beneficiary of:
    - (1) The real property of the ward; or
    - (2) The personal property of the ward valued over two thousand five hundred dollars upon such terms as the court may order, for the purpose of paying the ward's debts; providing for the care, maintenance, rehabilitation, training, or education of the ward or the ward's dependents; or for any other purpose which is in the best interests of the ward. The sale, mortgage, or other encumbrance or transfer of ownership of personal property of the ward valued at two thousand five hundred dollars or less does not require a court order.
  - d. Move the court under section 30.1-28-03.2 for authority to lease the real or personal property of the ward.
  - e. A guardian may not purchase, lease, or obtain ownership or become the beneficiary of property of the ward unless the price and manner of the sale are approved by the court.

Approved March 27, 2023

Filed March 28, 2023

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<sup>184</sup> Section 30.1-28-12 was also amended by section 5 of Senate Bill No. 2225, chapter 310.

## CHAPTER 309

### SENATE BILL NO. 2381

(Senator Cleary)

AN ACT to amend and reenact section 30.1-11-01 of the North Dakota Century Code, relating to the deposit of a will.

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

**SECTION 1. AMENDMENT.** Section 30.1-11-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **30.1-11-01. (2-515) Deposit of will in testator's lifetime.**

A will may be deposited by the testator or the testator's agent with a recorder for safekeeping. The will must be sealed and kept confidential. During the testator's lifetime, a deposited will must be delivered only to the testator or to a person authorized in a writing signed by the testator to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible, and to ensure that it will be resealed and kept on deposit after the examination. Upon being informed of the testator's death, the recorder shall notify any person designated to receive the will and deliver it to that person on request or the recorder may deliver the will to the appropriate court. The recorder shall deliver the will to the appropriate court on the written request of an interested person as defined in section 30.1-01-06. The written request must contain the complete address of the appropriate court along with a copy of the death certificate or obituary. The will must be either hand delivered upon acceptance from the court if the appropriate court is in the same county or delivered by certified mail with a return receipt if the appropriate court is in another county.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 310

### SENATE BILL NO. 2225

(Senators Dwyer, Lee, Sickler)  
(Representatives Klemin, Nelson, Schneider)

AN ACT to create and enact sections 30.1-28-16, 30.1-28-17, 30.1-28-18, and 30.1-28-19 of the North Dakota Century Code, relating to court-authorized involuntary treatment of a ward; to amend and reenact sections 25-03.1-18.2 and 30.1-26-01, subsection 2 of section 30.1-28-03, and sections 30.1-28-04, 30.1-28-12, and 30.1-28-14 of the North Dakota Century Code, relating to involuntary treatment of a ward with prescribed medication.

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

**SECTION 1. AMENDMENT.** Section 25-03.1-18.2 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.1-18.2. Guardian consent to involuntary treatment with prescribed medication.**

Notwithstanding sections 25-03.1-16, 25-03.1-18.1, and 25-03.1-24, if a patient refuses treatment with prescribed medication, a treating physician, physician assistant, ~~psychiatrist~~clinical nurse specialist, or advanced practice registered nurse may treat the patient with prescribed mood stabilizer or antipsychotic medication upon consent of the patient's guardian pursuant to ~~subsection 6 of section 30.1-28-12~~sections 30.1-28-16 through 30.1-28-18.

- ~~1. The guardian's consent for involuntary treatment with prescribed medication may not be in effect for more than ninety days without receiving another recommendation and determination pursuant to subsection 6 of section 30.1-28-12.~~
- ~~2. The patient has the right to be free of the effects of medication at the preliminary or treatment hearing by discontinuance of medication no later than twenty-four hours before the hearing unless, in the opinion of the prescriber, the need for the medication still exists or discontinuation would hamper the patient's preparation for and participation in the proceedings.~~

<sup>185</sup> **SECTION 2. AMENDMENT.** Section 30.1-26-01 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-26-01. (5-101) Definitions and use of terms.**

Unless otherwise apparent from the context, in this title:

- "Alternative resource plan" means a plan that provides an alternative to guardianship, using available support services and arrangements which are acceptable to the alleged incapacitated person. The plan may include the use

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<sup>185</sup> Section 30.1-26-01 was also amended by section 5 of Senate Bill No. 2224, chapter 308.

of providers of service such as visiting nurses, homemakers, home health aides, personal care attendants, adult day care and multipurpose senior citizen centers; home and community-based care, human service zones, and developmental disability services; powers of attorney, representative and protective payees; and licensed congregate care facilities.

2. "Incapacitated person" means any adult person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, or chemical dependency to the extent that the person lacks capacity to make or communicate responsible decisions concerning that person's matters of residence, education, medical treatment, legal affairs, vocation, finance, or other matters, or which incapacity endangers the person's health or safety.
3. "Least restrictive form of intervention" means that the guardianship imposed on the ward must compensate for only those limitations necessary to provide the needed care and services, and that the ward must enjoy the greatest amount of personal freedom and civil liberties consistent with the ward's mental and physical limitations.
4. A "protected person" is a minor or other person for whom a conservator or limited conservator has been appointed or other protective order has been made.
5. A "protective proceeding" is a proceeding under the provisions of section 30.1-29-01 to determine that a person cannot effectively manage or apply the person's estate to necessary ends, either because the person lacks the ability or is otherwise inconvenienced, or because the person is a minor, and to secure administration of the person's estate by a conservator or other appropriate relief.
6. "Refusal" means a clear and unequivocal response declining to accept prescribed mood stabilizer or antipsychotic medication.
7. A "ward" is a person for whom a guardian or limited guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

**186 SECTION 3. AMENDMENT.** Subsection 2 of section 30.1-28-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The petition for appointment of a guardian must state:
  - a. The name, address, and corporate or agency status of the petitioner, and its connection with or relationship to the proposed ward;
  - b. The name, age, and address of the proposed ward;
  - c. The name and address of any person or institution having care or custody over the proposed ward;
  - d. The names and addresses of the spouse, parents, and adult children or, if none, any adult siblings and any adult with whom the proposed ward resides in a private residence, or, if none, the nearest adult relative;

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<sup>186</sup> Section 30.1-28-03 was also amended by section 8 of Senate Bill No. 2224, chapter 308.

- e. A brief description of and the approximate value of the real and personal property and income of the proposed ward, so far as they are known to the petitioner;
- f. The extent of guardianship authority sought, including full authority, limited authority, or no authority in each area of residential, educational, medical, legal, vocational, and financial decisionmaking unless the petitioner is undecided on the extent of authority in any area, in which case the petition must state the specific areas in which the authority is sought;
- g. The occupation and qualifications of the proposed guardian;
- h. The name and address of the attorney, if known, who most recently represented the proposed ward;
- i. A statement alleging specific facts establishing the necessity for the appointment of a guardian;
- j. The name and address of any current conservator appointed for the proposed ward;
- k. The name and address of any person designated as an attorney in fact or agent in a power of attorney or as an agent in a health care directive;
- l. The name and address of any representative payee for the proposed ward;
- m. That less intrusive alternatives to guardianship have been considered;
- n. In the form of an attached recent statement, the physical, ~~mental~~neurological, and ~~emotional~~psychological limitations of the proposed ward from an expert examiner, if available; ~~and~~
- o. Whether the petition seeks to restrict any of the following rights:
  - (1) To vote;
  - (2) To seek to change marital status; ~~or~~
  - (3) To obtain or retain a motor vehicle operator's license; or
  - (4) To use, own, control, or possess a firearm; and
- p. If the proposed guardian seeks authority for involuntary treatment with prescribed mood stabilizer or antipsychotic medication under section 30.1-28-16, facts specified under subsection 3 of section 30.1-28-16. The petitioner also shall attach a recent report under subsection 2 of section 30.1-28-16.

<sup>187</sup> **SECTION 4. AMENDMENT.** Section 30.1-28-04 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-28-04. (5-304) Findings - Order of appointment.**

<sup>187</sup> Section 30.1-28-04 was also amended by section 9 of Senate Bill No. 2224, chapter 308.

1. The court shall exercise the authority conferred in this chapter consistent with the maximum self-reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's actual mental and adaptive limitations or other conditions warranting the procedure.
2. At a hearing held under this chapter, the court shall:
  - a. Hear evidence that the proposed ward is an incapacitated person. Age, eccentricity, poverty, or medical diagnosis alone is not sufficient to justify a finding of incapacity;
  - b. Hear evidence and determine whether there are any existing general durable powers of attorney and durable powers of attorney for health care. If there are validly executed durable powers of attorney, the court shall consider the appointed attorneys in fact and agents appointed thereunder when assessing alternative resource plans and the need for a guardian; and
  - c. Appoint a guardian and confer specific powers of guardianship only after finding in the record based on clear and convincing evidence that:
    - (1) The proposed ward is an incapacitated person;
    - (2) There is no available alternative resource plan that is suitable to safeguard the proposed ward's health, safety, or habilitation which could be used instead of a guardianship;
    - (3) The guardianship is necessary as the best means of providing care, supervision, or habilitation of the ward; and
    - (4) The powers and duties conferred upon the guardian are appropriate as the least restrictive form of intervention consistent with the ability of the ward for self-care.
3. Except upon specific findings of the court, a ward may not be deprived of any of the following legal rights: to vote, to seek to change marital status, or to obtain or retain a motor vehicle operator's license.
4. The court may find that the ward retains other specific rights.
5. The order appointing a guardian confers upon the guardian only those powers and duties specified in the order. In addition to any other powers conferred upon the guardian, the court's order must state whether the guardian has no authority, general authority, or limited authority to make decisions on behalf of the ward in each of the areas of residential, educational, medical, legal, vocational, and financial decisionmaking. A grant of limited authority must specify the limitations upon the authority of the guardian or the authority retained by the ward. The court's order must require the guardian to provide within ninety days from the date of the order a beginning inventory of all assets owned by the ward or in which the ward has an interest. The guardian shall provide a copy of the beginning inventory to the ward and any interested persons designated by the court in its order. Unless terminated earlier by the court, an order appointing or reappointing a guardian under this section is effective for up to five years. At least ninety days before the expiration of the

initial order of appointment or any following order of reappointment, the court shall request and consider information submitted by the guardian, ward, ward's attorney, if any, and any interested persons regarding whether the need for a guardian continues to exist. If it is recommended that the guardianship continue, the court may appoint a guardian ad litem or visitor, or both, in accordance with section 30.1-28-03. The court shall hold a hearing on whether the guardianship should continue. Following the hearing and consideration of submitted information, the court may reappoint the guardian for up to another five years, allow the existing order to expire, or appoint a new guardian in accordance with this section. The supreme court, by rule or order, shall provide for the regular review of guardianship in existence on August 1, 2015.

6. Unless a court of competent jurisdiction determines otherwise, a durable power of attorney for health care executed pursuant to chapter 23-06.5 takes precedence over any authority to make medical decisions granted to a guardian pursuant to chapter 30.1-28.
7. ~~A grant of general authority to make medical decisions includes the authority to consent to involuntary treatment with prescribed medications. Except upon specific findings of the court, a grant of limited authority does not include authority to consent to involuntary treatment with prescribed medications.~~
8. The court may require a guardian to furnish a bond in the amount and with sureties as the court specifies.

<sup>188</sup> **SECTION 5. AMENDMENT.** Section 30.1-28-12 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-28-12. (5-312) General powers and duties of guardian.**

1. A guardian of an incapacitated person has only the powers and duties specified by the court.
2. To the extent that it is consistent with the terms of an order by a court of competent jurisdiction, the guardian is entitled to custody of the person of the ward and may establish the ward's place of residence within or without this state. However, no guardian may voluntarily admit a ward to a mental health facility or state institution for a period of more than forty-five days without a mental health commitment proceeding or other court order. Notwithstanding the other provisions of this subsection, the guardian may readmit a ward to a mental health facility or a state institution within sixty days of discharge from that institution, if the original admission to the facility or institution had been authorized by the court.
3. If entitled to custody of the ward, the guardian should make provision for the care, comfort, and maintenance of the ward and, whenever appropriate, arrange for the ward's training, education, or rehabilitative services. The guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and personal effects.
4. Notwithstanding general or limited authority to make medical decisions on behalf of the ward, no guardian may consent to psychosurgery, abortion,

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<sup>188</sup> Section 30.1-28-12 was also amended by section 13 of Senate Bill No. 2224, chapter 308.

sterilization, or experimental treatment of any kind unless the procedure is first approved by order of the court.

5. When exercising the authority granted by the court, the guardian shall safeguard the civil rights and personal autonomy of the ward to the fullest extent possible by:
  - a. Meeting with the ward following the hearing, unless the ward is represented by an attorney, and explaining to the fullest extent possible the contents of the court's order and the extent of the guardian's authority;
  - b. Involving the ward as fully as is practicable in making decisions with respect to the ward's living arrangements, health care, and other aspects of the ward's care; and
  - c. Ensuring the ward's maximum personal freedom by using the least restrictive forms of intervention and only as necessary for the safety of the ward or others.
6. ~~A guardian with authority to consent to involuntary treatment with prescribed medications may not provide consent without receiving a recommendation and determination from the ward's treating physician, physician assistant, psychiatrist, or advanced practice registered nurse that:~~
  - ~~a. The proposed prescribed medication is clinically appropriate and necessary to effectively treat the ward and that the ward requires treatment;~~
  - ~~b. The ward was offered that treatment and refused it or that the ward lacks the capacity to make or communicate a responsible decision about that treatment;~~
  - ~~c. Prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the ward; and~~
  - ~~d. The benefits of the treatment outweigh the known risks to the ward.~~
7. If no conservator for the estate of the ward has been appointed and if the guardian has been granted authority to make financial decisions on behalf of the ward, the guardian may:
  - a. Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform that duty.
  - b. Receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but, the guardian may not use funds from the ward's estate for room and board which the guardian or the guardian's spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. The guardian shall exercise care to conserve any excess for the ward's needs.
  - c. Move the court under section 30.1-28-03.2 for authority to sell, mortgage, or otherwise encumber or transfer ownership or beneficiary of:

- (1) The real property of the ward; or
  - (2) The personal property of the ward valued over two thousand five hundred dollars upon such terms as the court may order, for the purpose of paying the ward's debts; providing for the care, maintenance, rehabilitation, training, or education of the ward or the ward's dependents; or for any other purpose which is in the best interests of the ward. The sale, mortgage, or other encumbrance or transfer of ownership of personal property of the ward valued at two thousand five hundred dollars or less does not require a court order.
- d. Move the court under section 30.1-28-03.2 for authority to lease the real or personal property of the ward.
  - e. A guardian may not purchase, lease, or obtain ownership or become the beneficiary of property of the ward unless the price and manner of the sale are approved by the court.
- ~~8-7.~~ If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this title, and the guardian must account to the conservator for funds expended.
- ~~9-8.~~ A guardian shall file an annual report with the court regarding the exercise of powers and duties in areas of authority specified in the court's order of appointment. The report must describe the status or condition of the ward, including any change of residence and reasons for the change, any medical treatment received by or withheld from the ward, any expenditure and income affecting the ward, any sale or transfer of property affecting the ward, and any exercise of legal authority by the guardian affecting the ward. The report must include changes that have occurred since the previous reporting period and an accounting of the ward's estate. The guardian also shall report whether the ward continues to require guardianship and whether any powers of the guardian should be increased or limited. The report must be filed with the clerk of district court. The filing of the report does not constitute an adjudication or a determination of the merits of the report nor does the filing of the report constitute the court's approval of the report. The court may approve a report and allow and settle an accounting only upon notice to the ward's guardian ad litem and other interested persons who have made an appearance or requested notice of proceedings. The office of the state court administrator shall provide printed forms that may be used to fulfill reporting requirements. Any report must be similar in substance to the state court administrator's form. The forms must be available in the office of clerk of district court or obtainable through the supreme court's internet website.
- ~~10-9.~~ Copies of the guardian's annual report to the court and of any other reports required by the court must be mailed to the ward and any interested persons designated by the court in its order. The ward's copy must be accompanied by a statement, printed with not less than double-spaced twelve-point type, of the ward's right to seek alteration, limitation, or termination of the guardianship at any time.
- ~~11-10.~~ The guardian is entitled to receive reasonable sums for services and for room and board furnished to the ward as approved by the court or as agreed upon

between the guardian and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

**SECTION 6. AMENDMENT.** Section 30.1-28-14 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-28-14. Guardianships established before July 1, 1990.**

The powers and duties of guardians and the rights and privileges of wards under guardianships established before July 1, 1990, are as provided by this chapter as it existed on June 30, 1990, and are not affected by chapter 405 of the 1989 Session Laws, except that guardians appointed before July 1, 1990, must comply with the requirements of subsections 2, 4, 5, and ~~9~~8 of section 30.1-28-12.

**SECTION 7.** Section 30.1-28-16 of the North Dakota Century Code is created and enacted as follows:

**30.1-28-16. Court-authorized involuntary treatment with prescribed medication.**

1. A guardian, upon notice and hearing, may request authorization from the court to consent to a ward to be treated with prescribed mood stabilizer or antipsychotic medication. The petition may be considered by the court in the initial procedure for court appointment of a guardian or at a separate involuntary treatment hearing pursuant to section 30.1-28-17. Upon filing a petition, the court shall set a hearing date on the issues and appoint an attorney guardian ad litem for the ward.
2. The guardian, as part of the petition, shall provide a report from the treatment expert examiner, treating physician, physician assistant, clinical nurse specialist, or advanced practice registered nurse which must certify:
  - a. The ward is a person requiring treatment;
  - b. The proposed prescribed mood stabilizer or antipsychotic medication is clinically appropriate and necessary to effectively treat the ward;
  - c. The ward was offered the treatment and refused;
  - d. The prescribed mood stabilizer or antipsychotic medication is the least restrictive form of intervention necessary to meet the treatment needs of the ward; and
  - e. The benefits of the treatment outweigh the known risks to the ward.
3. Evidence of the factors certified under subsection 2 may be presented to the court within the petition, during the initial hearing for court appointment of a guardian under section 30.1-28-03, or at a separate involuntary treatment hearing under section 30.1-28-17. Involuntary treatment with prescribed mood stabilizer or antipsychotic medication may not be authorized by the court solely for the convenience of the facility staff or for the purpose of punishment. The court in ruling on the requested authorization to consent to involuntary treatment with prescribed mood stabilizer or antipsychotic medication shall consider all relevant evidence presented at the hearing including:

- a. The danger the ward presents to self or others;
  - b. The ward's current conditions;
  - c. The ward's treatment history;
  - d. The results of previous medication trials;
  - e. The efficacy of current or past treatment modalities concerning the ward;
  - f. The ward's prognosis; and
  - g. The effect of the ward's mental condition on the ward's capacity to consent.
4. If the factors certified under subsection 2 have been demonstrated by clear and convincing evidence, the court may include a finding in its findings on the petition, or issue a separate order after notice and hearing, authorizing the guardian to provide consent to the treating medical professional to involuntarily treat the ward with prescribed mood stabilizer or antipsychotic medication. The order to consent to involuntary treatment with prescribed mood stabilizer or antipsychotic medication may not be in effect for more than ninety days, unless specifically authorized by the court.

**SECTION 8.** Section 30.1-28-17 of the North Dakota Century Code is created and enacted as follows:

**30.1-28-17. Involuntary treatment with prescribed medication hearing.**

1. The involuntary treatment with prescribed mood stabilizer or antipsychotic medication hearing must be held within three business days of the date of the filing of the petition unless waived by the ward or the ward has been released as a person not requiring treatment. The court may extend the time for hearing for good cause.
2. The hearing must be held in the county of the ward's residence or location, or the county in which the state hospital or treatment facility treating the ward is located.
3. At the hearing, evidence in support of the request must be presented by the guardian or guardian's counsel. During the hearing, the guardian and the ward must be afforded an opportunity to testify and to present and cross-examine witnesses. The court may receive the testimony of any other interested person.
4. All individuals not necessary for the conduct of the proceeding must be excluded, however, individuals having a legitimate interest in the proceeding may be admitted by the court. The hearing must be conducted as informal as practicable, but the issue must be tried as a civil matter.
5. Discovery and the power of subpoena permitted under the North Dakota Rules of Civil Procedure are available to the ward. The court shall receive all relevant and material evidence that may be offered as governed by the North Dakota Rules of Evidence. There is a presumption in favor of the ward, and the burden of proof is upon the petitioner to rebut the presumption in support

of the petition. If the court finds that the petition has not been sustained by clear and convincing evidence, the court shall deny the petition.

**SECTION 9.** Section 30.1-28-18 of the North Dakota Century Code is created and enacted as follows:

**30.1-28-18. Length of involuntary treatment with prescribed medication and continuing treatment orders.**

An initial order for a guardian to consent to involuntary treatment with prescribed mood stabilizer or antipsychotic medication may not exceed ninety days, unless the court is presented with evidence that the ward will continue to require treatment beyond the ninety-day period with the prescribed medication and the ward has historically declined treatment with subsequent harm to self or others. If the court determines the ward will continue to require treatment beyond the ninety-day period and orders continuing treatment, the order for a guardian to consent to continuing treatment may not exceed the term of the appointment of the guardian.

**SECTION 10.** Section 30.1-28-19 of the North Dakota Century Code is created and enacted as follows:

**30.1-28-19. Application.**

This chapter does not limit the use of medications pursuant to sections 25-03.1-16, 25-03.1-18.1, and 25-03.1-24, or prohibit a hospital or treatment facility from rendering medical care without consultation, if care is immediately necessary and delay would endanger the life of or adversely and substantially affect the health of the ward or others.

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 311

### SENATE BILL NO. 2222

(Senators Dwyer, Lee, Sickler)  
(Representatives Klemin, Nelson, Schneider)

AN ACT to create and enact a new section to chapter 30.1-29 of the North Dakota Century Code, relating to emergency conservators; to amend and reenact section 30.1-03-02, subsection 1 of section 30.1-29-05, sections 30.1-29-07 and 30.1-29-08, subsection 1 of section 30.1-29-09, and sections 30.1-29-18, 30.1-29-19, 30.1-29-22, 30.1-29-24, and 30.1-29-25 of the North Dakota Century Code, relating to a conservatorship.

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

**SECTION 1. AMENDMENT.** Section 30.1-03-02 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-03-02. (1-402) Notice - Waiver.**

A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding. A ward or protected person, for whom a guardianship, conservatorship, or other protective order is sought may not waive notice.

**SECTION 2. AMENDMENT.** Subsection 1 of section 30.1-29-05 of the North Dakota Century Code is amended and reenacted as follows:

1. On a petition for appointment of a conservator or other protective order, the petitioning party shall cause notice of the proceeding to be served personally on the person to be protected and the spouse of the person to be protected or, if none, the parents of the person to be protected, ~~must be served personally by the petitioning party with notice of the proceeding or any guardian or conservator, at least fourteen days before the date of hearing if they can be found within the state, or, if they cannot be found within the state, they, any other guardian or conservator, and, if none of these parties can be found, any government agency paying benefits to the person sought to be protected, if the person seeking the appointment has knowledge of the existence of these benefits, must be given notice in accordance with section 30.1-03-01. Waiver by the person to be protected is not effective unless the proceedings are limited to payment of veterans' administration benefits, the person to be protected attends the hearing, or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor.~~

**SECTION 3. AMENDMENT.** Section 30.1-29-07 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-29-07. (5-407) Procedure concerning hearing and order on original petition.**

1. Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters

alleged in the petition. The proposed conservator, if any, shall attend the hearing unless excused by the court for good cause. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to serve as guardian ad litem for the minor, giving consideration to the choice of the minor if fourteen years of age or older. The duties of a guardian ad litem include:

- a. Meeting, interviewing, and consulting with the person to be protected regarding the conservatorship proceeding, including explaining the purpose for the interview in the language, mode of communication, and terms the person is most likely to understand, the nature and possible consequences of the proceeding, the rights to which the person is entitled, and the legal options available, including the right to retain an attorney to represent the person;
  - b. Advocating for the best interests of the person to be protected. The appointed attorney serving as guardian ad litem may not represent the person in a legal capacity;
  - c. Ascertaining the views of the person to be protected concerning the proposed conservator, the powers and duties of the proposed conservator, the proposed conservatorship, and the scope and duration of the conservatorship;
  - d. Interviewing the person seeking appointment as conservator;
  - e. Obtaining any other relevant information;
  - f. Submitting a written report to the court containing the guardian ad litem's response to the petition and an assessment of the protected person's ability to attend the hearing either in person or by remote means; and
  - g. Attending the hearing unless excused by the court for good cause.
2. Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. The proposed conservator, if any, shall attend the hearing unless excused by the court for good cause. If, at any time in the proceeding, the court determines that the interests of the person to be protected are or may be inadequately represented, the court shall appoint an attorney to serve as guardian ad litem for the person to be protected. The duties of a guardian ad litem include:
- a. Meeting, interviewing, and consulting with the person to be protected regarding the conservatorship proceeding, including explaining the purpose for the interview in the language, mode of communication, and terms the person is most likely to understand, the nature and possible consequences of the proceeding, the rights to which the person is entitled, and the legal options available, including the right to retain an attorney to represent the person;
  - b. Advocating for the best interests of the person to be protected. The appointed attorney serving as guardian ad litem may not represent the person in a legal capacity;

- c. Ascertaining the views of the person to be protected concerning the proposed conservator, the powers and duties of the proposed conservator, the proposed conservatorship, and the scope and duration of the conservatorship;
  - d. Interviewing the person seeking appointment as conservator;
  - e. Obtaining any other relevant information;
  - f. Submitting a written report to the court containing the guardian ad litem's response to the petition and an assessment of the protected person's ability to attend the hearing either in person or by remote means; and
  - g. Attending the hearing unless excused by the court for good cause.
3. If the petition seeks appointment of a conservator or other protective order for reasons other than minority and the alleged disability is mental illness, mental deficiency, physical illness or disability, chronic use of drugs, or chronic intoxication, the court shall direct the person to be protected be examined by an expert examiner designated by the court. The expert examiner preferably should be someone who is not connected with any institution in which the person is a patient or is detained.
  - a. An expert examiner appointed under this subsection shall examine the person to be protected and submit a written report to the court. The report must contain:
    - (1) A description of the nature and degree of any current disability, including the medical or ~~psychological~~psychological history, if reasonably available;
    - (2) A medical prognosis or psychological evaluation specifying the estimated severity and duration of any current disability;
    - (3) A statement about how or in what manner any underlying condition of physical or mental health affects the ability of the person to be protected to provide for personal needs; and
    - (4) A statement about whether any current medication ~~affects~~or physical or mental conditions affect the demeanor of the person to be protected or the ability of the person to attend and participate fully in any court proceeding or in any other procedure required by the court or by court rule.
  - b. ~~In determining whether appointment of a conservator is appropriate, the court shall consider the reports ordered by the court under this subsection from a guardian ad litem and an expert examiner.~~ The court, guardian ad litem, petitioner, or person to be protected may subpoena the expert examiner who prepared and submitted the report to appear, testify, and be cross-examined.
4. The person to be protected must be present at the hearing in person or by remote means, unless good cause is shown for the absence. Good cause does not consist of the physical difficulty of the person to be protected to attend the hearing. The court shall take all necessary steps to make the courts

and court proceedings accessible and understandable to impaired persons. The court may convene temporarily, or for the entire proceeding, at any other location if it is in the best interest of the person to be protected.

5. In determining whether appointment of a conservator is appropriate, the court shall consider the reports ordered by the court under this section from a guardian ad litem and an expert examiner. In any case in which the veterans' administration is or may be an interested party, a certificate of an authorized official of the veterans' administration that the person to be protected has been found incapable of handling ~~the~~their benefits payable on examination in accordance with the laws and regulations governing the veterans' administration is prima facie evidence of the necessity for a conservator or other protective order.
6. After hearing, upon finding that the appointment of a conservator or other protective order is appropriate, the court shall make an appointment or other appropriate protective order. After the hearing, the guardian ad litem must be discharged of the duties as guardian ad litem.
7. If the court approves a conservator, that person may receive reasonable compensation and reimbursement from the protected person's estate if the compensation and reimbursement will not unreasonably jeopardize the protected person's well-being and estate. The court shall consider the following factors when determining what constitutes reasonable compensation and reimbursement:
  - a. The size and nature of the protected person's estate;
  - b. The benefit to the protected person, or the protected person's estate, of the conservator's services;
  - c. The necessity for the services performed;
  - d. The protected person's anticipated future needs and income;
  - e. The time spent by the conservator in the performance of the services;
  - f. Whether the services were routine or required more than ordinary skill or judgment;
  - g. Any unusual skill, expertise, or experience brought to the performance of the services;
  - h. The conservator's estimate of the value of the services performed;
    - i. The fee customarily charged in the community for similar services;
    - j. The nature and length of the relationship with the protected person;
  - k. The experience, reputation, diligence, and ability of the person performing the service;
  - l. Any conflict of interest the conservator may have; and

- m. Whether the appointment as conservator precluded the conservator from other employment.
8. The court may determine the weight to be given to each factor under subsection 7, if any, and to any other factor the court considers relevant. A separate finding is not required for each factor, but the court's findings must contain sufficient specificity to show the factual basis for the court's determination.
9. The court shall approve compensation and reimbursement before payment to the conservator is made.

**SECTION 4. AMENDMENT.** Section 30.1-29-08 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-29-08. (5-408) Permissible court orders.**

1. The court shall exercise the authority conferred in this chapter consistent with the maximum self-reliance and independence of the protected person and make protective orders only to the extent necessitated by the protected person's actual mental and adaptive limitations and other conditions warranting the procedure.
2. The court has the following powers which may be exercised directly or through a conservator, subject to section 30.1-29-22, in respect to the estate and affairs of protected persons:
  - a. While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without prior notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for the benefit of the person to be protected or the benefit of the dependents of the person to be protected.
  - b. After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor ~~without other disability~~, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, the minor's family, and members of the minor's household.
  - c. After hearing and upon determining that appointment of a conservator or other protective order is appropriate with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of the person's household, all the powers over the person's estate and affairs which the person could exercise if present and not under disability, except the power to make a will. These powers include power to make gifts, to convey or release the person's contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy, to exercise or release the person's powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the estate which may extend beyond the person's disability or life, to exercise options of the disabled person to purchase securities or other property, to exercise the person's rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value, to exercise the person's right to an elective share in the estate of the

- person's deceased spouse, and to renounce any interest by testate or intestate succession or by inter vivos transfer.
- d. The court may exercise or direct the exercise of its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding twenty percent of any year's income of the estate, or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person, and that the protected person either is incapable of consenting or has consented to the proposed exercise of power.
  - e. An order made pursuant to this section determining that appointment of a conservator or other protective order is appropriate has no effect on the capacity of the protected person.
3. Unless terminated earlier by the court, an order appointing or reappointing a conservator under this section is effective for up to five years. At least ninety days before the expiration of the initial order of appointment or any following order of reappointment, the court shall request and consider information submitted by the conservator, the protected person, the protected person's attorney, if any, and any interested persons regarding whether the need for a conservator continues to exist. If it is recommended the conservatorship continue, the court may appoint a guardian ad litem in accordance with section 30.1-29-07. The court shall hold a hearing on whether the conservatorship should continue. Following the hearing and consideration of submitted information, the court may reappoint the conservator for up to another five years, allow the existing order to expire, or appoint a new conservator in accordance with this section. The supreme court, by rule or order, shall provide for regular review of conservatorships in existence on August 1, 2017.

**SECTION 5. AMENDMENT.** Subsection 1 of section 30.1-29-09 of the North Dakota Century Code is amended and reenacted as follows:

1. If it is established in a proper proceeding that a basis exists, as described in section 30.1-29-01, for affecting the property and affairs of a person, the court, without appointing a conservator, may authorize, direct, or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include payment, delivery, deposit, or retention of funds or property, sale, mortgage, lease, or other transfer of property, entry into an annuity contract, a contract for life care, a deposit contract, a contract for training and education, or addition to or establishment of a suitable trust. The sale of real property is subject to section 30.1-29-22.

**SECTION 6. AMENDMENT.** Section 30.1-29-18 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-29-18. (5-418) Inventory and records.**

Within ninety days after appointment, every conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with the conservator's oath or affirmation that it is complete and accurate so far as the conservator is informed. The conservator shall provide a copy thereof to the protected person if the protected person can be located, has attained the age of

fourteen years, and has sufficient mental capacity to understand these matters, and ~~to any parent or guardian with whom the protected person resides and to any guardian, spouse, or parent, if the protected person is a minor, and to any interested persons designated by the court in its order.~~ The conservator shall keep suitable records of the conservator's administration and exhibit the same on request of any interested person.

**SECTION 7. AMENDMENT.** Section 30.1-29-19 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-29-19. (5-419) Annual reports and accounts.**

1. At least once annually and at other times as the court may direct, a conservator shall file a report and account with the court regarding the exercise of powers and duties specified in the court's order of appointment. The report must describe any expenditure and income affecting the protected person, any sale or transfer of property affecting the protected person, and any exercise of authority by the conservator affecting the protected person.
2. On termination of the protected person's minority ~~or disability, or on termination by a court with jurisdiction,~~ a conservator shall file a final report and accounting and provide a copy of the report or accounting to the protected person ~~and other parties as indicated in section 30.1-29-18.~~ The report or accounting must be filed with the clerk of district court. The filing of the report or accounting does not constitute the court's approval of the report or accounting. The court may approve a report and settle and allow an accounting only upon notice to the protected person and other interested persons who have made an appearance or requested notice of proceedings. ~~Subject to appeal or vacation within the time permitted, an~~ An order, made ~~upon~~after notice and hearing, allowing an intermediate account of a conservator, adjudicates ~~as to~~ liabilities concerning the matters considered in connection therewith, ~~adequately disclosed in the accounting.~~ An order, made ~~upon~~after notice and hearing, allowing a final account, adjudicates ~~as to~~ all previously unsettled liabilities of the conservator ~~to the protected person or the protected person's successors~~ relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate in the conservator's control, to be made in any manner the court may specify. The office of the state court administrator shall provide printed forms that may be used to fulfill reporting requirements. Any report must be similar in substance to the state court administrator's form. The forms must be available in the office of clerk of district court or obtainable through the supreme court's internet website.
3. Copies of the conservator's annual report to the court and of any other reports required by the court must be mailed by the conservator to the protected person and ~~any interested persons designated by the court in its order~~ other parties ~~as required under section 30.1-29-18.~~ The protected person's copy must be accompanied by a statement, printed with not less than double-spaced twelve-point type, of the protected person's right to seek alteration, limitation, or termination of the conservatorship at any time.

**SECTION 8. AMENDMENT.** Section 30.1-29-22 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-29-22. (5-422) ~~Sale, encumbrance, or transaction involving conflict of interest – Voidable exceptions~~ Authorization of single transaction to sell real property of the protected person.**

1. Any sale or encumbrance to a conservator, the conservator's spouse, agent, or attorney, or any corporation, limited liability company, or trust in which the conservator has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest is voidable unless the transaction is approved by the court, after notice to interested persons and others as directed by the court.
2. A conservator shall move the court for authorization to sell real property of the person to be protected, upon such terms as the court may order, for the purpose of paying the protected person's debts; providing for the care, maintenance, rehabilitation, training, or education of the person to be protected or the dependents of the person to be protected; or for any other purpose in the best interests of the person to be protected.
  - a. The motion must contain:
    - (1) A description of the property;
    - (2) The details of the sale;
    - (3) The reason for the transaction;
    - (4) The current fair market value of the property, including an appraisal unless good cause is shown;
    - (5) An explanation of why the transaction is in the best interest of the person to be protected; and
    - (6) A notice that any person interested in the real property of the person to be protected must file an objection to the transaction within ten days of the notice and demand a hearing.
  - b. The motion must be served upon the protected person, the spouse of the person to be protected, and all interested persons.
  - c. Consent of the spouse of the person to be protected or interested persons must be filed with the motion. If the motion is unopposed, the court may authorize the transaction without a hearing or may conduct a hearing and require proof of the matters necessary to support the authorization of the transaction.
  - d. The court's order must include specific findings regarding whether the transaction is in the best interests of the person to be protected.

**SECTION 9. AMENDMENT.** Section 30.1-29-24 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-29-24. (5-424) Powers of conservator in administration.**

1. A conservator has all of the powers conferred herein and any additional powers conferred by law on trustees in this state. ~~In addition, a conservator of the estate of an unmarried minor, as to whom no one has parental rights, has~~

~~the duties and powers of a guardian of a minor described in section 30.1-27-09 until the minor marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by chapter 30.1-27.~~

2. A conservator has power, without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee.
3. A conservator, acting reasonably in efforts to accomplish the purpose for which the conservator was appointed, except as provided in section 30.1-29-22, may act without court authorization or confirmation, to:
  - a. Collect, hold, and retain assets of the estate, including land in another state, until, in the conservator's judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator is personally interested.
  - b. Receive additions to the estate.
  - c. Continue or participate in the operation of any business or other enterprise.
  - d. Acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest.
  - e. Invest and reinvest estate assets in accordance with subsection 2.
  - f. Deposit estate funds in a bank, including a bank operated by the conservator.
  - g. Acquire or dispose of an estate asset, including land in another state for cash or on credit, at public or private sale, and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset.
  - h. Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings.
  - i. Subdivide, develop, or dedicate land to public use, to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or to partition by giving or receiving considerations, and to dedicate easements to public use without consideration.
  - j. Enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship.
  - k. Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.
  - l. Grant an option involving disposition of an estate asset, except the sale of real property, to take an option for the acquisition of any asset.
  - m. Vote a security, in person or by general or limited proxy.

- n. Pay calls, assessments, and any other sums chargeable or accruing against or on account of securities.
- o. Sell or exercise stock or membership interest, subscription or conversion rights, to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation, limited liability company, or other business enterprise.
- p. Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held.
- q. Insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons.
- r. Borrow money to be repaid from estate assets or otherwise, to advance money for the protection of the estate or the protected person, and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets and the conservator has a lien on the estate as against the protected person for advances so made.
- s. Pay or contest any claim, to settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise, and to release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible.
- t. Pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration, and protection of the estate.
- u. Allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties.
- v. Pay any sum distributable to a protected person or the protected person's dependent without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to the distributee's guardian or, if none, to a relative or other person with custody of the distributee's person.
- w. Employ persons, including attorneys, auditors, investment advisers, or agents, even though they are associated with the conservator, to advise or assist the conservator in the performance of the conservator's administrative duties, to act upon their recommendation without independent investigation, and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.
- x. Prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of the conservator's duties.

- y. Execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.

**SECTION 10. AMENDMENT.** Section 30.1-29-25 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-29-25. (5-425) Distributive duties and powers of conservator.**

1. A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care, or benefit of the protected person and the protected person's dependents in accordance with the following principles:
  - a. The conservator is to consider recommendations relating to the appropriate standard of support, education, and benefit for the protected person made by a parent or guardian, if any. The conservator may not be surcharged for sums paid to persons or organizations actually furnishing support, education, or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless the conservator knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.
  - b. The conservator is to expend or distribute sums reasonably necessary for the support, education, care, or benefit of the protected person with due regard to:
    - (1) The size of the estate, the probable duration of the conservatorship, and the likelihood that the protected person, at some future time, may be fully able to manage the protected person's affairs and the estate which has been conserved for the protected person.
    - (2) The accustomed standard of living of the protected person and members of the protected person's household.
    - (3) Other funds or sources used for the support of the protected person.
  - c. The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household, who are unable to support themselves, and who are in need of support.
  - d. Funds expended under this subsection may be paid by the conservator to any person, including the protected person, to reimburse for expenditures that the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and advance payments are customary or reasonably necessary under the circumstances.
2. If the estate is ample to provide for the purposes implicit in the distributions authorized by the preceding subsection, a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make, in amounts which do not exceed in total for any year twenty percent of the income from the estate.

3. When a minor who has not been adjudged disabled under subsection 2 of section 30.1-29-01 attains majority, the minor's conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible. A final report must be filed as provided in section 30.1-29-19.
4. ~~When the conservator is satisfied that a protected person's disability other than minority has ceased~~When the court has determined the conservatorship is no longer needed, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible. A final report must be filed as provided in section 30.1-29-19.
5. If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into the conservator's possession, inform the executor or a beneficiary named therein that the conservator has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If after forty days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that the conservator may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under section 30.1-13-04 and to any person nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection, and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section ~~shall have~~has the effect of an order of appointment of a personal representative as provided in section 30.1-14-08 and chapters 30.1-17 through 30.1-21, except that estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

**SECTION 11.** A new section to chapter 30.1-29 of the North Dakota Century Code is created and enacted as follows:

**Emergency conservator.**

1. On petition by a person interested in the estate of the person to be protected, the court may appoint an emergency conservator if the court finds that compliance with the procedures in this chapter likely will result in substantial harm to the estate of the person to be protected, and that no other person appears to have authority and willingness to act in the circumstances. The court may appoint the conservator for a specified period of time, not to exceed ninety days. Immediately upon receipt of the petition for an emergency conservator, the court shall appoint a guardian ad litem to advocate for the best interests of the estate of the person to be protected in the proceeding and any subsequent proceeding. Except as otherwise provided in subsection 2, reasonable notice of the time and place of a hearing on the petition must be given to the person whose estate is to be protected, the person's spouse, if any, and any other persons as the court directs.

2. An emergency conservator may be appointed without notice only if the court finds from affidavit or other sworn testimony that the estate of the person to be protected will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency conservator without notice, the person whose estate is to be protected and the person's spouse, if any, must be given notice of the appointment within forty-eight hours. The court shall hold a hearing on the appropriateness of the appointment within ten days after the appointment.
3. Appointment of an emergency conservator, with or without notice, is not a determination of the person or the estate of the person's need for protection.
4. The court may remove an emergency conservator at any time. An emergency conservator shall make any report the court requires. In all other respects, the provisions of this chapter concerning conservators apply to an emergency conservator.

Approved March 27, 2023

Filed March 28, 2023



# JUDICIAL REMEDIES

## CHAPTER 312

### HOUSE BILL NO. 1243

(Representatives Hoverson, Louser, Monson, Motschenbacher, Schneider, Weisz)  
(Senator Burckhard)

AN ACT to amend and reenact sections 32-03.1-01, 32-03.1-02, and 32-03.1-02.2 of the North Dakota Century Code, relating to the Good Samaritan Act, actions barred, and immunity for persons offering wholesome food or grocery product.

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

**SECTION 1. AMENDMENT.** Section 32-03.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **32-03.1-01. Definitions.**

For the purposes of this chapter, the following terms shall have the designated meanings:

1. "Aid or assistance necessary or helpful in the circumstances" means any actions which the aider reasonably believed were required to prevent death or serious permanent injury, disability or handicap, or reasonably believed would benefit the injured or ill person, depending upon the aider's perception of the nature and severity of the injury or illness and the total emergency situation, and that the aider reasonably believed the aider could successfully undertake.
2. "Apparently wholesome food" means food that meets all quality and labeling standards imposed by federal, state, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.
3. "Apparently fit grocery product" means a grocery product that meets all quality and labeling standards imposed by federal, state, and local laws and regulations even though the product may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.
4. "Appropriate person licensed or certified by this state or by any state or province to provide medical care or assistance" means any physician, nurse, emergency medical technician, or other medical or paramedical personnel whom the aider reasonably believes is such, based upon the representations of the person or that person's actions in providing medical aid.
- 3-5. "Employed expressly or actually" means either that the person's formal duties include the provision of emergency medical aid, or that the person customarily provides such aid and is informally expected or relied upon to do so in the course of the person's employment.

- 4-6. "Gross negligence" means acts or omissions falling short of intentional misconduct which nevertheless show a failure to exercise even slight care or any conscious interest in the predictable consequences of the acts or omissions. For the purposes of this chapter, "gross negligence" includes the failure of an aider to relinquish direction of the care of an injured or ill person when an appropriate person licensed or certified by this state or by any state or province to provide medical care or assistance assumes or attempts to assume responsibility for the care of the injured or ill person.

**SECTION 2. AMENDMENT.** Section 32-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**32-03.1-02. Actions barred.**

~~No person~~An individual, or the ~~person's~~individual's employer, subject to the exceptions in sections 32-03.1-03, 32-03.1-04, and 32-03.1-08, who renders aid or assistance necessary or helpful in the circumstances to ~~other persons~~another individual who ~~have~~has been injured or ~~are~~is ill as the result of an accident or illness, or any mechanical, external or organic trauma, ~~or in the offering of apparently wholesome food or an apparently fit grocery product~~ may not be named as a defendant or held liable in any personal injury civil action by any party in this state for acts or omissions arising out of a situation in which emergency aid or assistance is rendered, unless it is plainly alleged in the complaint and later proven that ~~such person's~~the individual's acts or omissions constituted intentional misconduct or gross negligence.

**SECTION 3. AMENDMENT.** Section 32-03.1-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**32-03.1-02.2. Immunity for a licensed health care provider who provides volunteer medical care at free clinics - Immunity for persons offering wholesome food or grocery product.**

1. A health care provider licensed under title 43 who renders medical care on a voluntary basis at a free clinic is not liable in any personal injury civil action for acts or omissions resulting in the rendering of that care unless it is plainly alleged in the complaint and later proven that the health care provider's acts or omissions constituted intentional misconduct or gross negligence. For purposes of this section, "voluntary" is defined as without receiving remuneration of any sort. "Free clinic" is defined as a clinic that is established to provide primary health care to persons who are otherwise unable to obtain medical services due to their lack of access to health insurance or medical assistance.
2. A restaurant, grocery store, or an individual or entity offering apparently wholesome food and apparently fit grocery products, free of charge may not be held liable for any acts or omissions resulting in the offering of food care unless it is plainly alleged in the complaint and later proven the act of the individual or entity constituted intentional misconduct or gross negligence.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 313

### HOUSE BILL NO. 1284

(Representatives Pyle, Hagert, O'Brien, D. Ruby, Wagner)  
(Senators J. Roers, Vedaa)

AN ACT to amend and reenact section 32-03.3-02 of the North Dakota Century Code, relating to liability limitations of charitable organizations; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 32-03.3-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **32-03.3-02. Liability of charitable organizations - Limitations - Statute of limitations.**

1. A charitable organization may be only held liable for money damages for a personal injury or property damage proximately caused by the negligence or wrongful act or omission of an employee acting within the employee's scope of employment.
2. The liability of the charitable organization under this chapter is limited to a total of ~~two~~three hundred ~~fifty~~seventy-five thousand dollars per person and one million dollars for any number of claims arising from any single occurrence. The charitable organization may not be held liable, or be ordered to indemnify an employee held liable, for punitive or exemplary damages. The liability limits under this subsection must be adjusted annually as follows:
  - a. On July 1, 2025, a total of four hundred six thousand two hundred fifty dollars per person and one million six hundred twenty-five thousand dollars for any single occurrence.
  - b. On July 1, 2026, a total of four hundred thirty-seven thousand five hundred dollars per person and one million seven hundred fifty thousand dollars for any single occurrence.
  - c. On July 1, 2027, a total of four hundred sixty-eight thousand seven hundred fifty dollars per person and one million eight hundred seventy-five thousand dollars per occurrence.
3. An action brought under this chapter must be commenced within the period provided in chapter 28-01.

**SECTION 2. AMENDMENT.** Section 32-03.3-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **32-03.3-02. Liability of charitable organizations - Limitations - Statute of limitations.**

1. A charitable organization may be only held liable for money damages for a personal injury or property damage proximately caused by the negligence or wrongful act or omission of an employee acting within the employee's scope of employment.
2. The liability of the charitable organization under this chapter is limited to a total of ~~three~~five hundred ~~seventy~~five thousand dollars per person and ~~one~~two million dollars for any number of claims arising from any single occurrence. The charitable organization may not be held liable, or be ordered to indemnify an employee held liable, for punitive or exemplary damages. ~~The liability limits under this subsection must be adjusted annually as follows:~~
  - a. ~~On July 1, 2025, a total of four hundred six thousand two hundred and fifty dollars per person and one million six hundred twenty-five thousand dollars for any single occurrence.~~
  - b. ~~On July 1, 2026, a total of four hundred thirty-seven thousand five hundred dollars per person and one million seven hundred fifty thousand dollars for any single occurrence.~~
  - c. ~~On July 1, 2027, a total of four hundred sixty-eight thousand seven hundred fifty dollars per person and one million eight hundred seventy-five thousand dollars per occurrence.~~
3. An action brought under this chapter must be commenced within the period provided in chapter 28-01.

**SECTION 3. EFFECTIVE DATE.** Section 1 of this Act becomes effective on July 1, 2023.

**SECTION 4. EFFECTIVE DATE.** Section 2 of this Act becomes effective on July 1, 2029.

**SECTION 5. EMERGENCY.** Section 1 of this Act is declared to be an emergency measure.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 314

### SENATE BILL NO. 2072

(State and Local Government Committee)  
(At the request of the Office of Management and Budget)

AN ACT to amend and reenact section 32-09.1-05 of the North Dakota Century Code, relating to service of garnishment.

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

**SECTION 1. AMENDMENT.** Section 32-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

#### **32-09.1-05. Service on office of management and budget - Fees.**

Service upon the state of North Dakota, or any state institution, department, or agency, as garnishee, may be made upon the director of the office of management and budget, or the director's authorized designee, in the manner provided by law for service in garnishment proceedings, including the fee to be tendered and paid the office of management and budget for making and filing an affidavit of disclosure in the amount of twenty-five dollars. The fee must be deposited in the state treasury. The director of the office of management and budget may provide for an optional electronic method of service for which disclosure fees are not required.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 315

### SENATE BILL NO. 2109

(State and Local Government Committee)  
(At the request of the Office of Management and Budget)

AN ACT to create and enact subsection 5 of section 32-12.2-15 of the North Dakota Century Code, relating to limitation of liability provisions contained within packaging or click-through agreements for certain products.

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

**SECTION 1.** Subsection 5 of section 32-12.2-15 of the North Dakota Century Code is created and enacted as follows:

5. An agency may purchase routine or standardized products that contain adhesive contract terms in shrink wrap documents, third-party end user license, or click-through agreements that are not consistent with this section if the agency, in consultation with the attorney general's office and the office of management and budget, determines the purchase poses no reasonable risk of loss that cannot be limited under this section given the nature of the product's intended use, including data and system security. Routine or standardized products are products that are commercially available to the public which do not exceed one thousand dollars in cost.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 316

### SENATE BILL NO. 2041

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact chapter 32-49 of the North Dakota Century Code, relating to the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act; and to repeal section 32-03-58 of the North Dakota Century Code, relating to the distribution of intimate images without or against consent.

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

**SECTION 1.** Chapter 32-49 of the North Dakota Century Code is created and enacted as follows:

##### **32-49-01. Definitions.**

As used in this chapter:

1. "Consent" means affirmative, conscious, and voluntary authorization by an individual with legal capacity to give authorization.
2. "Depicted individual" means an individual whose body is shown in whole or in part in an intimate image.
3. "Disclosure" or "disclose" means the transfer, publication, or distribution to another person.
4. "Identifiable" means recognizable by a person other than the depicted individual from:
  - a. An intimate image itself; or
  - b. An intimate image and identifying characteristic displayed in connection with the intimate image.
5. "Identifying characteristic" means information that may be used to identify a depicted individual.
6. "Individual" means a human being.
7. "Intimate image" means a photograph, film, video recording, or other similar medium showing:
  - a. The uncovered genitals, pubic area, anus, or female postpubescent nipple of a depicted individual; or
  - b. A depicted individual engaging in or being subjected to sexual conduct.

8. "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.
9. "Sexual conduct" includes:
  - a. Masturbation;
  - b. Genital, anal, or oral sex;
  - c. Sexual penetration of, or with, an object;
  - d. Bestiality; or
  - e. The transfer of semen onto a depicted individual.

**32-49-02. Civil action - Definitions.**

1. As used in this section:
  - a. "Harm" includes physical harm, economic harm, and emotional distress whether or not accompanied by physical or economic harm.
  - b. "Private" means:
    - (1) Created or obtained under circumstances in which a depicted individual had a reasonable expectation of privacy; or
    - (2) Made accessible through theft of property, bribery, coercion, sexual extortion, fraud, false pretenses, voyeurism, or exceeding authorized access to an account, message, file, device, resource, or property.
2. Except as otherwise provided under section 32-49-03, a depicted individual who is identifiable and who suffers harm from a person's intentional disclosure or threatened disclosure of an intimate image that was private without the depicted individual's consent has a cause of action against the person if the person knew or acted with reckless disregard for whether the:
  - a. Depicted individual did not consent to the disclosure;
  - b. Intimate image was private; and
  - c. Depicted individual was identifiable.
3. The following conduct by a depicted individual does not establish by itself that the individual consented to the disclosure of the intimate image which is the subject of an action under this chapter or the individual lacked a reasonable expectation of privacy:
  - a. Consent to creation of the image; or
  - b. Previous consensual disclosure of the image.
4. A depicted individual who does not consent to the sexual conduct or uncovering of the part of the body depicted in an intimate image of the

individual retains a reasonable expectation of privacy even if the image was created when the individual was in a public place.

### **32-49-03. Exceptions to liability.**

1. As used in this section:
  - a. "Child" means an unemancipated individual who is less than eighteen years of age.
  - b. "Parent" means an individual recognized as a parent under a law of this state other than this chapter.
2. A person is not liable under this chapter if the person proves that disclosure of, or a threat to disclose, an intimate image was:
  - a. Made in good faith:
    - (1) By law enforcement;
    - (2) In a legal proceeding; or
    - (3) For medical education or treatment;
  - b. Made in good faith in the reporting or investigation of:
    - (1) Unlawful conduct; or
    - (2) Unsolicited and unwelcome conduct;
  - c. Related to a matter of public concern or public interest; or
  - d. Reasonably intended to assist the depicted individual.
3. Subject to subsection 4, a defendant who is a parent or legal guardian of a child is not liable under this chapter for a disclosure or threatened disclosure of an intimate image of the child.
4. If a defendant asserts an exception to liability under subsection 3, the exception does not apply if the plaintiff proves the disclosure was:
  - a. Prohibited by law other than this chapter; or
  - b. Made for the purpose of sexual arousal, sexual gratification, humiliation, degradation, or monetary or commercial gain.

### **32-49-04. Plaintiff's privacy.**

In an action under this chapter:

1. The court may exclude or redact from all pleadings and documents filed in the action other identifying characteristics of the plaintiff under rule 3.4 of the North Dakota Rules of Court;

2. A plaintiff to whom subsection 1 applies shall file with the court and serve on the defendant a confidential information form that includes the excluded or redacted plaintiff's name and other identifying characteristics; and
3. The court may make further orders as necessary to protect the identity and privacy of a plaintiff.

### **32-49-05. Remedies.**

1. In an action under this chapter, a prevailing plaintiff may recover:
  - a. The greater of:
    - (1) Economic and noneconomic damages proximately caused by the defendant's disclosure or threatened disclosure, including damages for emotional distress whether or not accompanied by other damages; or
    - (2) Statutory damages not to exceed ten thousand dollars against each defendant found liable under this chapter for all disclosures and threatened disclosures by the defendant of which the plaintiff knew or reasonably should have known when filing the action or which became known during the pendency of the action. In determining the amount of statutory damages under this paragraph, consideration must be given to the age of the parties at the time of the disclosure or threatened disclosure, the number of disclosures or threatened disclosures made by the defendant, the breadth of distribution of the image by the defendant, and other exacerbating or mitigating factors;
  - b. An amount equal to any monetary gain made by the defendant from disclosure of the intimate image; and
  - c. Exemplary damages.
2. In an action under this chapter, the court may award a prevailing plaintiff:
  - a. Reasonable attorney's fees and costs; and
  - b. Other remedies available by law, including injunctive relief.
3. This chapter does not affect a right or remedy available under a law of this state other than this chapter.

### **32-49-06. Statute of limitations.**

1. An action under subsection 2 of section 32-49-02 for:
  - a. An unauthorized disclosure may not be brought later than six years from the date the disclosure was discovered or should have been discovered with the exercise of reasonable diligence; and
  - b. A threat to disclose may not be brought later than six years from the date of the threat to disclose.
2. Except as otherwise provided in subsection 3, this section is subject to the provisions tolling limitations in chapter 28-01.

3. In an action under subsection 2 of section 32-49-02 by a depicted individual who was a minor on the date of the disclosure or threat to disclose, the time specified in subsection 1 does not begin to run until the depicted individual attains eighteen years of age.

**32-49-07. Construction.**

This chapter must be construed to be consistent with the Communications Decency Act of 1996 [47 U.S.C. Section 230].

**SECTION 2. REPEAL.** Section 32-03-58 of the North Dakota Century Code is repealed.

Approved March 14, 2023

Filed March 15, 2023



# LABOR AND EMPLOYMENT

## CHAPTER 317

### SENATE BILL NO. 2249

(Senators Hogue, Larsen, Vedaa)  
(Representatives Nathe, Roers Jones, Vetter)

AN ACT to create and enact a new chapter to title 34 of the North Dakota Century Code, relating to the efficiency of administration of occupational boards; to provide for a report to the legislative management; and to provide an effective date.

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

**SECTION 1.** A new chapter to title 34 of the North Dakota Century Code is created and enacted as follows:

##### Definitions.

1. "Board" means an occupational or professional board established under title 43.
2. "Commissioner" means the labor commissioner.

##### Duties of commissioner.

The commissioner shall gather information regarding the continuing education requirements and the practice of licensing out-of-state practitioners for each board, the education standards and practices board, and the state board of law examiners. The commissioner shall analyze the information to develop and update a strategy for more efficient continuing education requirements and more efficient practices for licensing out-of-state practitioners. As necessary, the commissioner may recommend introduction of legislation to implement this strategy.

#### **SECTION 2. LABOR COMMISSIONER - OCCUPATIONS AND PROFESSIONS - REPORT TO LEGISLATIVE MANAGEMENT.**

1. During the 2023-24 interim, the labor commissioner shall hold meetings with each occupational board under title 43, the education standards and practices board, and the state board of law examiners. The topics addressed at the meetings must include administration of the boards, continuing education, and the licensure of out-of-state applicants, with a goal of establishing a strategy to license out-of-state practitioners within three business days of application and to revise continuing education requirements to recognize the contributions of employers and the opportunities afforded by evolving technology.
2. During the 2023-24 interim, the labor commissioner shall provide the legislative management with periodic reports on the status of the commissioner's implementation of this section.

3. The labor commissioner may recommend introduction of legislation for the sixty-ninth legislative assembly which provides for streamlining of licensure of out-of-state practitioners, and revision of continuing education requirements.

**SECTION 3. EFFECTIVE DATE.** Section 1 of this Act becomes effective August 1, 2023.

Approved April 12, 2023

Filed April 13, 2023

## CHAPTER 318

### SENATE BILL NO. 2170

(Senators Magrum, Elkin)  
(Representatives J. Johnson, Kasper, Koppelman)

AN ACT to create and enact a new section to chapter 34-07 of the North Dakota Century Code, relating to minors working in hazardous occupations; and to provide for a legislative management study.

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

**SECTION 1.** A new section to chapter 34-07 of the North Dakota Century Code is created and enacted as follows:

##### **Minors working in hazardous occupations.**

A minor who is at least sixteen years of age may be employed or permitted to work in a hazardous occupation if the minor is in a registered apprenticeship program or is a student learner of an approved career and technical education program. Under this section, a parental signature is required for the minor to participate as an apprentice or student learner. This section does not limit the ability of a minor who is at least sixteen years of age to work in an occupation already permitted by law.

**SECTION 2. LEGISLATIVE MANAGEMENT STUDY - STATE OFFICE OF APPRENTICESHIP.** During the 2023-24 interim, the legislative management shall consider studying the feasibility and desirability of creating a state office of apprenticeship. The study must include consideration of the advantages and disadvantages of creating the office in comparison to apprenticeships remaining solely under the control of the federal department of labor. The study must identify areas in which the state may exercise more control over the federal labor law to provide more flexibility as it applies to minors at least sixteen years of age. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

Approved April 29, 2023

Filed May 1, 2023

## CHAPTER 319

### SENATE BILL NO. 2132

(Senators Sorvaag, Davison)  
(Representatives Dockter, McLeod)

AN ACT to create and enact section 34-07-15.1 of the North Dakota Century Code, relating to labor exceptions for minors performing sports-attendant services; to amend and reenact section 34-07-15 of the North Dakota Century Code, relating to maximum hours of labor for minors; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 34-07-15 of the North Dakota Century Code is amended and reenacted as follows:

#### **34-07-15. Maximum hours of labor of minors fourteen or fifteen years of age - Notice to be posted.**

1. A minor fourteen or fifteen years of age may not be employed or permitted to work at any occupation, except in sports-attendant services, in domestic services, and at farm labor, before the hour of seven a.m. nor after the hour of seven p.m., except that these hours are seven a.m. to nine p.m. from June first through labor day, nor more than eighteen hours during schoolweeks, nor more than three hours on schooldays, nor more than forty hours during nonschoolweeks, nor more than eight hours on nonschooldays. A schoolweek is considered to be any week Sunday through Saturday in which a youth is required to be in attendance, for any period of time, four or more days. Provided, however, that the limitations restricting hours of work during schoolweeks and schooldays do not apply to minors who are not attending school because they are excepted from compulsory school attendance by subdivisions b, c, and d of subsection 1 of section 15.1-20-02.
2. Every employer shall post, in a conspicuous place where minors are employed, a printed notice stating the hours of work required of the minors each day of the week, the hours of commencing and stopping work, and the hours allowed for dinner or other meals. The printed form of the notice must be furnished by the labor commissioner. The employment of any minor for a longer period than that stated in the notice is a violation of this chapter.

**SECTION 2.** Section 34-07-15.1 of the North Dakota Century Code is created and enacted as follows:

#### **34-07-15.1. Sports-attendant services - Exception.**

1. The time and hour limitations of subsection 1 of section 34-07-15 do not apply to a minor fourteen or fifteen years of age employed in the performance of sports-attendant services at a professional sporting event.
2. Permissible duties of a sports-attendant include:
  - a. Pregame and postgame or practice setup of balls, items, and equipment.

- b. Supplying and retrieving balls, items, and equipment during a sporting event.
- c. Clearing the field or court of debris and moisture during play.
- d. Providing ice, drinks, and towels to players during play.
- e. Running errands for trainers, managers, coaches, or players before, during, and after a sporting event.
- f. Returning or storing balls, items, and equipment in a clubhouse or locker room after a sporting event.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 12, 2023

Filed April 13, 2023



# LIENS

## CHAPTER 320

### SENATE BILL NO. 2311

(Senators Beard, Bekkedahl, Kessel, Patten)  
(Representatives Dyk, Rios)

AN ACT to amend and reenact subsection 11 of section 35-24-01 and sections 35-24-03, 35-24-11, and 35-27-02 of the North Dakota Century Code, relating to well or pipeline construction liens and construction liens.

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

**SECTION 1. AMENDMENT.** Subsection 11 of section 35-24-01 of the North Dakota Century Code is amended and reenacted as follows:

11. "Pipeline" means any pipeline and related facilities laid and designed as a means of transporting ~~natural gas, oil, or gasoline, or their components or derivatives, liquid or gaseous substances of any kind~~ and the right of way therefor.

**SECTION 2. AMENDMENT.** Section 35-24-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **35-24-03. Property subject to lien.**

1. Liens created under section 35-24-02 extend to:
  - 1-a. The whole of the leasehold for oil or gas purposes to which the materials or services were furnished, or for which the labor was performed, and the appurtenances thereunto belonging; and
  - 2-b. All materials and fixtures owned by the owner or owners of such leasehold and used or employed, or furnished to be used or employed in the drilling or operating of any oil or gas well located thereon; and
  - 3-c. All oil or gas wells located on such leasehold, and the oil or gas produced therefrom, and the proceeds thereof inuring to the working interest therein as such working interest existed on the date such labor was first performed or such material or services were first furnished; or
  - 4-d. The whole of the pipeline to which the materials or services were furnished, or for which labor was performed, and all buildings and appurtenances thereunto belonging, including, without limiting the generality of the foregoing, gates, valves, pumps, pump stations, and booster stations, and upon all materials and fixtures owned by the owner of such pipeline and used or employed or furnished to be used or employed in the construction thereof.

2. Notwithstanding any provision in this chapter, liens created under section 35-24-02 may not extend to a freehold estate unless that freehold estate is owned by the owner of any leasehold for oil or gas purposes or any pipeline for which the labor, materials, or services were supplied.

**SECTION 3. AMENDMENT.** Section 35-24-11 of the North Dakota Century Code is amended and reenacted as follows:

**35-24-11. Contents and filing of statement of lien.**

1. Every person claiming a lien under this chapter shall file with the recorder of the county in which the leasehold or pipeline, or some part thereof, is situated, a statement verified by affidavit setting forth the amount claimed and the items thereof, the dates on which labor was performed or material or services furnished, the name of the owner of the leasehold or pipeline, if known, the name of the claimant and the claimant's mailing address, a description of the leasehold or pipeline, and if the claimant is a claimant under section 35-24-04, the name of the person for whom the labor was immediately performed or the material or services were immediately furnished.
2. The statement of the lien must contain the following statement in at least sixteen-point typeface unless the owner of the freehold estate also is the owner of the leasehold for oil or gas purposes or the pipeline for which the labor, materials, or services were supplied:

The lien in this chapter attaches only to the leasehold for oil or gas purposes or any pipeline for which labor, materials, or services were supplied. This lien does not attach to or encumber the real property of a freehold estate.

Failure to include the statement mentioned in this subsection in the statement of the lien does not invalidate a lien on the leasehold or pipeline.

3. The statement of lien must be filed within six months after the date on which the claimant's labor was last performed or material or services were last furnished under a single contract as provided for in section 35-24-10.

<sup>189</sup> **SECTION 4. AMENDMENT.** Section 35-27-02 of the North Dakota Century Code is amended and reenacted as follows:

**35-27-02. Persons entitled to construction lien - Notice.**

1. Any person that improves real estate, 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 the improvement is situated or to which 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 that improves the real estate, a lien is not allowed.

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<sup>189</sup> Section 35-27-02 was also amended by section 2 of House Bill No. 1323, chapter 321.

2. Any person that extends credit or makes a contract with any agent, trustee, contractor, or subcontractor of the owner for the improvement of real estate, upon demand, 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.
3. Notwithstanding any provision in this section, any person that performs labor or furnishes materials or services under chapter 35-24 is prohibited from claiming or maintaining a lien under this chapter.

Approved April 18, 2023

Filed April 19, 2023

## CHAPTER 321

### HOUSE BILL NO. 1323

(Representatives Cory, Grueneich, Koppelman, Louser, Roers Jones, Rohr)  
(Senators Kannianen, J. Roers)

AN ACT to amend and reenact sections 35-27-01, 35-27-02, 35-27-03, 35-27-07, 35-27-18, and 35-27-24 of the North Dakota Century Code, relating to a claimant's right to maintain a construction lien for furnishing materials and improvements.

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

**SECTION 1. AMENDMENT.** Section 35-27-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **35-27-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Contract" means any agreement for improving real property, written or unwritten, express or implied.
2. "Improve" means to build, erect, place, make, alter, remove, repair, or demolish any improvement upon, connected with, or beneath the surface of any land, or excavate any land, or furnish materials for any of ~~such~~these purposes, or dig or construct any fences, wells, or drains upon ~~such~~the improvement, or perform any labor or services upon ~~such~~the improvement; or perform any architectural services, construction staking, engineering, land surveying, mapping, or soil testing upon or in connection with the improvement; or perform any labor or services or furnish any materials in laying upon the real estate or in the adjoining street or alley any pipes, wires, fences, curbs, gutters, paving, sewer pipes or conduit, or sidewalks, or in grading, seeding, sodding, or planting for landscaping purposes, or in equipping any such improvement with fixtures or permanent apparatus.
3. "Improvement" means any building, structure, erection, construction, alteration, repair, removal, demolition, excavation, landscaping, or any part thereof, existing, built, erected, improved, placed, made, or done on real estate for its permanent benefit.
4. "Materials" means materials or fixtures ~~which~~that are incorporated in the improvement and those which become normal wasteage in construction operations, custom or specially fabricated materials for incorporation in the improvement, building materials used for construction, but not remaining in the improvement, subject to diminution by the salvage value of ~~such~~the materials, tools, appliances, or machinery, excluding hand tools, used in the construction of the improvement to the extent of the reasonable value for the period of actual use. The rental value ~~shall~~is not be determinable by the contract for rental unless the owner is a party ~~thereto~~to the rental contract.

5. "Owner" means the legal or equitable owner and also every person for whose immediate use and benefit any building, erection, or improvement is made, having the capacity to contract, including guardians of minors or other persons, ~~and including any agent, trustee, contractor, or subcontractor of such owner.~~
6. "Person" means every natural person, fiduciary, association, corporation, or limited liability company.
7. "Subcontractor" means ~~all persons~~ a person contributing any skill, labor, or materials to the improvement ~~except such as have contracts therefor directly which does not have a direct contract with the owner;~~ and, includes any person ~~whethat~~ enters into a contract with a subcontractor ~~as above defined,~~ for the performance of any part of ~~such~~ the subcontractor's contract.

<sup>190</sup> **SECTION 2. AMENDMENT.** Section 35-27-02 of the North Dakota Century Code is amended and reenacted as follows:

**35-27-02. Persons entitled to construction lien - Notice - Prohibition.**

1. Any person that improves real estate, ~~whether~~ under a contract with the owner of ~~such~~ the 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 the improvement is situated or to which the improvement may be removed for the price or value of ~~such~~ the contribution. ~~Provided, however, that the~~
2. ~~The~~ amount of the lien is ~~only for limited to~~ the difference between the price paid by the owner, trustee, or agent and the price or value of the contribution. If the owner, trustee, or agent has paid the full price or value of the contribution, no lien is allowed. ~~Provided further that if~~
3. ~~If~~ the owner, trustee, or an agent of the owner has received a valid waiver of lien, signed by the person that improves the real estate, a lien is not allowed.
4. Any person that extends credit or makes a contract with any agent, trustee, contractor, or subcontractor of the owner for the improvement of real estate, upon demand, 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~~ legal or equitable owner of the real estate. Written notice ~~that~~ a lien will be claimed must be given to the legal or equitable owner of the real estate by certified mail at least ten days before the recording of the construction lien.

**SECTION 3. AMENDMENT.** Section 35-27-03 of the North Dakota Century Code is amended and reenacted as follows:

**35-27-03. When lien attaches.**

1. As against the legal and equitable owner of ~~the land~~, subject to section 35-27-02, such liens attach and take effect from the time the first item of material or labor is furnished upon the premises for the beginning of the improvement.

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<sup>190</sup> Section 35-27-02 was also amended by section 4 of Senate Bill No. 2311, chapter 320.

2. ~~As against a bona fide purchaser, mortgagee, or encumbrancer without notice, no~~ A lien may attach prior to may not attach against a person that acquires an interest in real estate, in good faith, without actual or constructive notice of the claimant's rights, before the actual and visible beginning of the improvement on the grounds subject property. Subject to the exception set forth
3. Except as provided in section 35-27-04, all such liens under this chapter are preferred to any unrecorded mortgage or other encumbrance not then of record, unless the lienholder had actual notice thereof the unrecorded interest.

**SECTION 4. AMENDMENT.** Section 35-27-07 of the North Dakota Century Code is amended and reenacted as follows:

**35-27-07. Title of vendor or consenting owner - Subject to liens.**

1. When land is sold under an executory contract requiring the vendee to improve the same land and such contract is forfeited or surrendered after liens have attached by reason of such improvements, the title of the vendor is subject thereto, but the vendor is not personally liable if the contract was made in good faith. When improvements are made by one person upon the land of another, all persons interested ~~therein otherwise~~ in the land, other than as bona fide prior encumbrancers or lienors, are deemed to have authorized ~~such~~ the improvements, ~~insofar as to and are~~ subject their interests to the liens ~~therefor attached to the real estate.~~ Any person who has not authorized the same may protect the person's interest from such liens
2. A person may object to any unauthorized improvements by serving:
  - a. Serving upon the person doing work or otherwise contributing to such improvement making the improvements, within five days after knowledge thereof of the improvements, written notice that the improvement is not being made at the person's instance, unauthorized, or by posting like
  - b. Posting a notice objecting to the unauthorized improvements, and keeping the same notice posted, in a conspicuous place on the premises. As against a lessor no lien is given for repairs made by or at the instance of the lessor's lessee, unless the lessor has actual or constructive notice thereof and does not object thereto.
3. If the legal or equitable owner's tenant orders improvements on leased real estate, no lien is allowed unless the legal or equitable owner has actual or constructive notice of the improvements and fails to object to the improvements on the leased property.

**SECTION 5. AMENDMENT.** Section 35-27-18 of the North Dakota Century Code is amended and reenacted as follows:

**35-27-18. Construction lien on railway contracts obtainable.**

Every person 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~~ the line of railway and the right of way of ~~such~~ the 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 legal or equitable owner of the line of railway for the construction and operation ~~thereof~~ of the railway, to secure the payment for the labor, skill, and materials, upon recording a lien, within ninety days from the last day of the month in which the labor or material was furnished, but a failure to record within the ninety days does not defeat the lien except to the extent specified in section 35-27-14.

**SECTION 6. AMENDMENT.** Section 35-27-24 of the North Dakota Century Code is amended and reenacted as follows:

**35-27-24. Action to enforce 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 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~~ legal or equitable 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~~ if a deficiency remains after the sale of the real property subject to the lien an execution may issue for ~~such~~ the deficiency.

Approved March 30, 2023

Filed April 3, 2023

## CHAPTER 322

### SENATE BILL NO. 2261

(Senators Kannianen, Kreun, Rust)  
(Representatives B. Anderson, Fegley, Longmuir)

AN ACT to amend and reenact sections 17-04-07 and 35-27-13 of the North Dakota Century Code, relating to wind energy facility liens.

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

**SECTION 1. AMENDMENT.** Section 17-04-07 of the North Dakota Century Code is amended and reenacted as follows:

##### **17-04-07. Wind energy facility liens.**

~~Wind turbines~~For any wind turbine and associated facilities that are part of an electric energy conversion facility designed for or capable of generation by wind energy conversion exceeding one-half megawatt of electricity ~~may not be considered improvements for purposes of chapter 35-27 and for which a lien is provided under chapter 35-27, the lien is upon only the improvement and not upon the land.~~

**SECTION 2. AMENDMENT.** Section 35-27-13 of the North Dakota Century Code is amended and reenacted as follows:

##### **35-27-13. How lien perfected - 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 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. Unless the owner of the freehold estate also is the owner of the leasehold for wind turbines or an electric energy conversion facility for which the labor, materials, or services were supplied, if a recorded lien is for a wind turbine or associated facility under section 17-04-07, the recorded lien must contain the following statement in at least sixteen-point type:

The lien in this chapter attaches only to the leasehold for an electric energy conversion facility or wind turbines for which labor, materials, or services were supplied. This lien does not attach to or encumber the real property or freehold estate.

Failure to include the statement required under this section in the statement of the lien does not invalidate a lien on the leasehold or electric energy conversion facility.

Approved April 26, 2023

Filed April 27, 2023

# LIVESTOCK

## CHAPTER 323

### HOUSE BILL NO. 1101

(Agriculture Committee)  
(At the request of the Agriculture Commissioner)

AN ACT to amend and reenact sections 36-01-08 and 36-01-33 of the North Dakota Century Code, relating to the fee collection for the cost of each brucellosis tag, each identification tag, and each health book the commissioner distributes.

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

**SECTION 1. AMENDMENT.** Section 36-01-08 of the North Dakota Century Code is amended and reenacted as follows:

**36-01-08. Duties - Rules - Fees - Continuing appropriation.**

The board shall protect the health of the domestic animals and nontraditional livestock of this state, shall determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of dangerous, contagious, and infectious diseases among the domestic animals and nontraditional livestock of this state, and shall prevent the escape and release of an animal injurious to or competitive with agriculture, horticulture, forestry, wild animals, and other natural resource interests. For the purpose of preventing the escape and release of an animal injurious to or competitive with agriculture, horticulture, forestry, wild animals, and other natural resource interests, the board may, by rule, quarantine any such animal, cause any such animal to be killed, regulate or prohibit the arrival in or departure from this state of any such animal, and at the cost of the owner thereof, the board may detain any animal found to be in violation of any rule or prohibition. Any matter relating to the health and welfare of domestic animals and nontraditional livestock and not specifically assigned by statute to another entity is deemed to be within the authority of the board. The board may make rules to carry into effect the purposes of this chapter and other duties prescribed in this title. ~~The commissioner shall collect fees for the actual direct cost of providing each brucellosis tag, each identification tag, and each health book the commissioner distributes. The fees collected by the commissioner must be deposited in the agriculture commissioner's operating fund and are appropriated on a continuing basis to the state board of animal health to be used to enforce this chapter.~~

**SECTION 2. AMENDMENT.** Section 36-01-33 of the North Dakota Century Code is amended and reenacted as follows:

**36-01-33. State board of animal health - Certification of livestock - Fees - Agriculture commissioner - 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~~subsections 1 and 2 of this section to the state treasurer for deposit in the ~~agriculture~~ commissioner's operating fund.
  3. The commissioner may collect fees for the cost of each brucellosis tag, each identification tag, and each health book the commissioner distributes. The fees collected by the commissioner under this subsection must be deposited in the commissioner's operating fund and are appropriated on a continuing basis to the board to be used to enforce this chapter.

Approved March 14, 2023

Filed March 15, 2023

# MILITARY

## CHAPTER 324

### HOUSE BILL NO. 1069

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

AN ACT to create and enact a new chapter to title 37 of the North Dakota Century Code, relating to the pay and benefits received by national guard members; to amend and reenact subsection 9 of section 37-17.1-05 of the North Dakota Century Code, relating to response to disasters or emergencies; and to repeal sections 37-04-08, 37-04-09, 37-04-11, 37-04-12, 37-04-13, and 37-07-05 of the North Dakota Century Code, relating to expenses and pay of officer and enlisted members of the national guard; and to declare an emergency.

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

**SECTION 1.** A new chapter to title 37 of the North Dakota Century Code is created and enacted as follows:

#### **37-04.1-01. Pay and allowances of national guard members - Deductions allowed.**

1. Each officer and enlisted member of the national guard, when called to state active duty by the governor, is entitled to receive pay and allowances at the highest rate provided for national guard members of the same grade in the national guard of the United States, except any enlisted member serving in a grade below E-3 will be paid the same as an enlisted member serving in the grade of E-3, and the daily pay rate for each of the grades listed must be increased as follows:
  - a. E-3 - fifty-five percent.
  - b. E-4 - forty-five percent.
  - c. E-5 - thirty-five percent.
  - d. E-6 - twenty-five percent.
  - e. E-7 - fifteen percent.
  - f. E-8 - ten percent.
2. If ordered by the governor in response to an emergency management assistance compact request and the requesting state pays state active duty pay at a higher rate than this state, national guard officers and enlisted members may receive the higher rate of pay when this state is reimbursed at the higher rate.

3. Each officer and enlisted member of the national guard is entitled to receive transportation, shelter, and subsistence. The value of articles issued to any national guard member and not returned in good order on demand, and all legal fines or forfeitures, may be deducted from the member's pay.
4. Each officer and enlisted member of the national guard is entitled to receive a state active duty pay enhancement of three hundred dollars for every month spent on state active duty or a prorated amount for each day of state active duty up to three hundred dollars per month.
5. Each officer and enlisted member of the national guard, when called to state active duty by the governor, is entitled to receive the same incentive pay that an officer or enlisted member of the same grade and rating would be eligible to receive if called to active duty under federal authority in service of the United States, not to exceed the monthly amount authorized for the incentive under federal law.
6. Commissioned officers and enlisted members serving on state active duty for more than fourteen days may, at the discretion of their commanding officer, receive pay for necessary rest and recovery while on duty if it is deemed necessary to ensure the national guard members' readiness to perform assigned duties while on state active duty.

#### **37-04.1-02. Expenses allowed officers and enlisted members of national guard.**

Officers or enlisted members of the national guard when called into state active duty by the governor must be reimbursed for traveling and incidental expenses at the same rate provided by law for other state officials. The adjutant general may authorize the purchase of meals or rations for officers or enlisted members of the national guard in a duty or travel status in lieu of individual reimbursement for meals.

#### **37-04.1-03. Pay of national guard members serving on boards, commissions, and courts.**

An officer or enlisted member of the national guard detailed to serve on any board or commission ordered by the governor, or under the governor's authority by the commanding officer of the national guard, or on any court of inquiry or court-martial ordered by proper authority under any provision of this title, is entitled to receive pay and allowances at the highest rate provided for national guard members of the same grade in the national guard of the United States for each day that officer or enlisted member is actually employed on the board or court, or engaged in the business of the board or court, including any day the officer or enlisted member is traveling to and from the board or court. The sum received may not exceed ten days' pay and the actual traveling expenses and subsistence unless, upon application of the president of the court-martial or the presiding officer of the board, the officer appointing the court or board has authorized the court or board to sit for a longer period, or in case of a court-martial, the governor or officer ordering the court has authorized the court to sit for a period longer than ten days.

#### **37-04.1-04. Pay and allowances allowed national guard called to service under federal authority.**

An officer or enlisted member of the national guard ordered to active duty under federal authority, while so assigned, must receive the pay and allowances authorized under federal law.

<sup>191</sup> **SECTION 2. AMENDMENT.** Subsection 9 of section 37-17.1-05 of the North Dakota Century Code is amended and reenacted as follows:

9. The governor may authorize the adjutant general to recall to state active duty, on a volunteer basis, former members of the North Dakota national guard. Those recalled must possess the qualifications required by the disaster or emergency. Recall under this subsection is effective only for the duration of the disaster or emergency and recalled personnel will be released from state active duty upon competent authority that the requirement of their service under this subsection has passed. Compensation for personnel recalled under this subsection will be based upon section 37-07-0537-04.1-01.

**SECTION 3. REPEAL.** Sections 37-04-08, 37-04-09, 37-04-11, 37-04-12, 37-04-13, and 37-07-05 of the North Dakota Century Code are repealed.

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

Approved March 14, 2023

Filed March 15, 2023

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<sup>191</sup> Section 37-17.1-05 was also amended by section 1 of House Bill No. 1167, chapter 332.

## CHAPTER 325

### HOUSE BILL NO. 1109

(Representatives Cory, Karls, Klemin)  
(Senators Meyer, Vedaa)

AN ACT to amend and reenact section 37-01-01 of the North Dakota Century Code, relating to military definitions.

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

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

##### **37-01-01. Definitions.**

In this title, unless the context otherwise requires:

1. "Active militia" means the organized and uniformed military forces of this state known as the "North Dakota national guard" and the reserve militia when called to active service.
2. "Active service" means state active duty in case of public disaster, riot, tumult, breach of the peace, resistance of process, or the threat thereof, whenever called in aid of civil authorities, or under martial law, or at encampments, whether ordered by state or federal authorities, and includes the performance of any other duty requiring the entire time of the organization or person, except when called or drafted into the federal service by the president of the United States. The term includes service in case of, or to prevent, insurrection, riot, or invasion under the order of the commander in chief communicated through proper military channels.
3. "Adjutant general coin" means a coin or medallion bearing the state's adjutant general's organization insignia or emblem.
4. "Armed forces" means army, marine corps, navy, air force, space force, and coast guard.
5. "Disaster response coin" means a coin or medallion bearing a design to commemorate the response during a state disaster or emergency.
6. "Military" means armed forces.
- ~~5-7.~~ "Military forces of this state" means those individuals in the active militia.
- ~~6-8.~~ "Militia" means a group of individuals defined in the Constitution of North Dakota.
- ~~7-9.~~ "National guard" means that part of the military forces of this state which is organized, equipped, and federally recognized under the provisions of the National Defense Act, as amended, of the United States as the "national

guard, air national guard, of the United States and the state of North Dakota". The term includes also the term "national guard of the state of North Dakota".

~~8-10.~~ "On duty" includes periods of drill and of such other training and service as may be required under state or federal law, regulation, or order.

~~9-11.~~ "Reserve militia" consists of all those individuals who are subject to service in the active militia and who are not serving in the national guard of this state.

~~40-12.~~ "State active duty" means active service on behalf of the state under authority of the governor at the expense of the state.

~~44-13.~~ "State defense force" means the group of individuals in the reserve militia in state active duty under chapter 37-12.1.

14. "Uniformed services" means the armed forces, national oceanic and atmospheric administration commissioned officer corps, and the commissioned corps of the United States public health service.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 326

### SENATE BILL NO. 2095

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

AN ACT to amend and reenact sections 37-01-03, 37-01-43, and 37-07.3-03 of the North Dakota Century Code, relating to the operation of the North Dakota national guard.

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

**SECTION 1. AMENDMENT.** Section 37-01-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **37-01-03. Articles of uniform code of military justice applicable in state - Regulations governing - Punishment for offenses while on duty.**

The articles of uniform code of military justice [10 U.S.C. 801-950] in effect on December 31, 2022, governing the armed forces of the United States ~~as codified in and~~ the Manual for Courts-Martial, United States, 2019 edition, are a part of this title so far as the articles are applicable and not modified by any provision of this title. An individual who commits an offense while on military duty status, including state active duty, may be tried by a court-martial lawfully appointed even after the duty has terminated, and if found guilty, the accused must be punished according to the articles of uniform code of military justice and the rules and regulations governing the armed forces of the United States, within the limits prescribed in this title and by federal law for the courts-martial in the national guard. In any case in which the individual alleged to have committed the offense could be charged either under the code of military justice or the civil law of this state, the officer whose duty it is to approve the charge, in the officer's discretion, may order the person charged or subject to being charged to be turned over to the civil authorities for trial. Commanders may administer nonjudicial punishment for offenses while on military duty status, including state active duty, in accordance with part V, Manual for Courts-Martial, except the service member may not demand a trial by courts-martial. When reference is made to the articles of uniform code of military justice, to the military service, or to the armed forces of the United States, the reference must be deemed to include the military service of this state. Laws of this state affecting the military forces must be construed to conform to all acts and regulations of the United States affecting the same subjects.

**SECTION 2. AMENDMENT.** Section 37-01-43 of the North Dakota Century Code is amended and reenacted as follows:

#### **37-01-43. North Dakota military civil relief act.**

An individual called or ordered to active service for thirty consecutive days or longer has all of the protections afforded to persons in the military service of the United States under the Servicemembers Civil Relief Act [50 U.S.C. 3901-4043] in effect on December 31, ~~2020~~2022.

**SECTION 3. AMENDMENT.** Section 37-07.3-03 of the North Dakota Century Code is amended and reenacted as follows:

**37-07.3-03. Trust fund use.**

The principal, interest, and income from the national guard training area and facility development trust fund must be used by the adjutant general solely for training area acquisition and facility development; provided the principal, and any interest and income which the fund accrues from July 1, 2019, through June 30, ~~2023~~2029, must be used solely for the acquisition or lease of land for national guard training purposes at Camp Gilbert C. Grafton training center and the expenditure, in conjunction with federal matching funds, for the construction of new national guard armories.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 327

### HOUSE BILL NO. 1193

(Representatives Pyle, Cory, J. Olson, Roers Jones, Warrey)  
(Senators Bekkedahl, Meyer, Patten, Wobbema)

AN ACT to amend and reenact section 37-01-25 of the North Dakota Century Code, relating to leave of absence without loss of pay for military duties.

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

**SECTION 1. AMENDMENT.** Section 37-01-25 of the North Dakota Century Code is amended and reenacted as follows:

**37-01-25. Officers and employees of state or political subdivisions in national guard or federal service to retain status for period of active service or any military duty.**

All officers and employees of this state or of a political subdivision ~~thereof~~ this state who:

1. Are members of the national guard;
2. Are members of the armed forces reserve of the United States of America;
3. Shall be subject to call in the federal service by the president of the United States; or
4. Shall volunteer for such service,

when ordered by proper authority to active noncivilian employment for any military duty, are entitled to a leave of absence from such civil service for the period of such active service or military duty including traveling to and from a duty station without loss of status or efficiency rating. If such persons have been in the continuous employ of the state or political subdivision for ninety days immediately preceding the leave of absence, they shall receive twenty workdays each calendar year without loss of pay. In addition, any leave of absence necessitated by a full or partial mobilization of the reserve and national guard forces of the United States of America, or emergency state active duty, must be without loss of pay for the first thirty days thereof less any other paid leave of absence which may have been granted during the calendar year pursuant to this section. ~~However, if leave is required for weekend, daily, or hourly periods of drill for any military training duty or travel to and from a duty station on a day in which a public officer or employee is scheduled to perform the work of the state or of a political subdivision, the officer or employee must be given the option of time off with a concurrent loss of pay for the period missed or must be given, the use of leave of absence without loss of pay for the period missed, or an opportunity to reschedule the workperiod so that the reserve or national guard weekend, daily, or hourly drill or period of training military duty or travel to and from a duty station occurs during time off from work without loss of status or efficiency rating.~~

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 328

### SENATE BILL NO. 2094

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

AN ACT to create and enact a new section to chapter 37-07.2 of the North Dakota Century Code, relating to the expansion of the national guard tuition grants to include out-of-state postsecondary education institutions; and to provide a legislative management report.

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

**SECTION 1.** A new section to chapter 37-07.2 of the North Dakota Century Code is created and enacted as follows:

#### National guard member grants - Eligibility for use for out-of-state postsecondary education institutions - Terms - Report.

1. Subject to legislative appropriation and regulations adopted by the adjutant general, a qualifying member of the national guard who enrolls in an accredited postsecondary education institution which is located outside of the state, may receive a grant in an amount not to exceed one hundred percent of the cost of tuition and fees for similar courses and credit hours for a qualifying member of the national guard who is enrolled in the North Dakota university system with the highest tuition and fee rate.
2. The adjutant general shall adopt regulations for distributing grants under this section and establishing qualification requirements for grant recipients.
3. A member of the national guard may receive a grant under this section if the member maintains satisfactory performance with the national guard, meets the qualification requirements of the regulations adopted under this section, and pursues a course of study satisfying the normal requirements of the postsecondary institution in which the member is enrolled.
4. For purposes of this section, "out-of-state" includes any online or remote course of study offered by an accredited postsecondary education institution located outside the state of North Dakota.
5. Before June 1, 2024, the national guard shall provide a report to the legislative management regarding tuition grant usage, including the number of grants awarded for the use at out-of-state institutions and grants awarded for online or remote coursework.

Approved April 24, 2023

Filed April 24, 2023

## CHAPTER 329

### SENATE BILL NO. 2204

(Senators Meyer, Clemens, Larsen, Wobbema)  
(Representatives Pyle, M. Ruby)

AN ACT to amend and reenact sections 37-14-01.1, 37-14-03.3, and 37-14-04 of the North Dakota Century Code, relating to veterans' relief and rehabilitation.

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

**SECTION 1. AMENDMENT.** Section 37-14-01.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **37-14-01.1. Definition of veteran.**

1. As used in this chapter, "veteran" means ~~a~~:
  - a. An individual who served in the armed forces of the United States on federal active duty:
4. (1) For reasons other than training and who has been discharged under other than dishonorable conditions; or
2. (2) To whom the United States veterans administration has assigned a service-connected disability rating;
  - b. Current members of the national guard or reserve; or
  - c. Former members of the national guard or reserve who have been discharged under other than dishonorable conditions.
2. Subdivisions b and c of subsection 1 do not apply to section 37-14-14.

**SECTION 2. AMENDMENT.** Section 37-14-03.3 of the North Dakota Century Code is amended and reenacted as follows:

##### **37-14-03.3. Revolving fund.**

The moneys in the permanent revolving fund of the veterans' aid fund are available for:

1. Making loans to any veteran and to a surviving spouse of a veteran ~~if the spouse has not remarried;~~
2. Collecting loans if in the opinion of the department a person has the financial means to repay and that person deliberately refuses to repay; and
3. Paying administrative expenses related to the making and collection of loans made from the fund.

**SECTION 3. AMENDMENT.** Section 37-14-04 of the North Dakota Century Code is amended and reenacted as follows:

**37-14-04. Veterans' aid fund - Purpose.**

The purpose of the veterans' aid fund is to make loans to any veteran and to a surviving spouse of a veteran ~~if the spouse has not remarried~~. A qualified applicant may be permitted to receive more than one loan providing the total amount of all loans does not exceed five thousand dollars.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 330

### HOUSE BILL NO. 1389

(Representatives Hanson, Kiefert, Pyle, Schauer)  
(Senators Bekkedahl, Weber, Wobbema)

AN ACT to amend and reenact section 37-15-02 of the North Dakota Century Code, relating to the provision of basic and long-term care to service members and veterans.

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

**SECTION 1. AMENDMENT.** Section 37-15-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **37-15-02. Object of veterans' home.**

The object of the veterans' home is to provide basic care as defined under chapter 23-09.3 and long-term care as defined under chapter 23-16 for:

1. All veterans as defined in section 37-01-40 ~~and all honorably discharged soldiers;~~
2. All service members of the North Dakota United States armed forces, national guard who heretofore or hereafter, or reserve who were discharged or released under other than dishonorable conditions and who do not meet the definition of a veteran but who are or may become permanently disabled from any cause while in line and discharge of duty, and who are enrolled in veterans' affairs health care before admission to the veterans' home; and
- ~~2.3. The spouses and spouse or surviving spouses of those mentioned in subsection 1 if they meet~~3. spouse of an individual in subsection 1 or 2 if the spouse or surviving spouse meets the requirements for admission under section 37-15-10.

Approved March 23, 2023

Filed March 23, 2023

## CHAPTER 331

### HOUSE BILL NO. 1070

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

AN ACT to create and enact three new sections to chapter 37-17.1 of the North Dakota Century Code, relating to the establishment and administration of a hazard mitigation revolving loan fund; to amend and reenact subsection 12 of section 54-16-04.1 of the North Dakota Century Code, relating to emergency commission authorizations; and to provide a continuing appropriation.

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

**SECTION 1.** Three new sections to chapter 37-17.1 of the North Dakota Century Code are created and enacted as follows:

#### **Hazard mitigation revolving loan fund - Purposes - Establishment - Continuing appropriation.**

There is created a hazard mitigation revolving loan fund to coordinate funding for hazard mitigation activities in North Dakota. The department of emergency services will administer this fund in accordance with the Safeguarding Tomorrow through Ongoing Risk Mitigation Act [Pub. L. 116-284; 134 Stat. 4869]. Grants from the federal government or its agencies, including the federal emergency management agency, provided to the state for the capitalization of the hazard mitigation revolving loan fund, and required state matching funds, must be deposited in the hazard mitigation revolving loan fund in compliance with the terms of the grants. The principal of the grants must remain available for providing financial assistance as allowed under the Safeguarding Tomorrow through Ongoing Risk Mitigation Act [Pub. L. 116-284; 134 Stat. 4869]. All moneys placed in the fund under this section are appropriated to the department on a continuing basis. When moneys in the revolving loan fund are not required for current expenditures, they must be invested in interest-bearing obligations.

#### **Department - Powers and duties - Administration.**

The department of emergency services shall administer the hazard mitigation revolving loan fund and has the following powers and duties:

1. Apply for and accept grants of money from the United States federal emergency management agency or other federal agencies. Grant funds must be deposited in the hazard mitigation revolving loan fund to be used for purposes authorized under the Safeguarding Tomorrow through Ongoing Risk Mitigation Act [Pub. L. 116-284; 134 Stat. 4869], including:
  - a. Provide loans or loan guarantees, or other financial assistance, to local governments for projects eligible for assistance from the revolving loan fund.

- b. If the bond proceeds are deposited in the revolving loan fund, act as a source of revenue and security for the payment of principal and interest on bonds issued by the state.
  - c. Provide other financial and technical assistance and to make any other expenditure authorized under federal law.
  - d. Earn interest before the disbursement of financial or technical assistance.
  - e. Pay administrative expenses associated with the revolving loan fund as authorized under the Safeguarding Tomorrow through Ongoing Risk Mitigation Act [Pub. L. 116-284; 134 Stat. 4869].
2. Enter into contracts and other agreements to implement the hazard mitigation revolving loan fund. The department may combine the financial administration of the hazard mitigation revolving loan fund with the financial administration of the drinking water treatment revolving loan fund established under section 61-28.1-11 and the water pollution control revolving loan fund established under chapter 61-28.2.
3. Administer and disburse funds in accordance with the Safeguarding Tomorrow through Ongoing Risk Mitigation Act [Pub. L. 116-284; 134 Stat. 4869].
4. Establish assistance priorities and expend grant funds pursuant to the priority list for the hazard mitigation revolving loan fund.

#### **Hazard mitigation revolving loan fund - Loan authorization.**

1. When approved by the emergency commission, the office of the adjutant general is authorized to borrow from the Bank of North Dakota, to match federal funds provided for the implementation of the hazard mitigation revolving loan fund. In addition to the principal repayment, the Bank of North Dakota shall receive interest on the loan at a rate equal to other state agency borrowings. After the state receives approval from the federal emergency management agency to fund projects that utilize the hazard mitigation revolving loan fund, the office of the adjutant general shall submit a request to the emergency commission for:
  - a. Approval to make an application for a loan from the Bank of North Dakota;
  - b. Approval for additional personnel required to perform the anticipated mitigation activities; and
  - c. If required, authority to spend additional state and federal funds for the mitigation program.
2. If the request is acceptable, the emergency commission shall approve the request and issue a notice of its action to the office of the adjutant general, Bank of North Dakota, and the office of management and budget. The office of the adjutant general shall keep the emergency commission apprised of the progress of the hazard mitigation revolving loan fund and report on the implementation of the loan fund on an annual basis. The office of the adjutant general is responsible to repay any loan, including accrued interest, from the Bank of North Dakota which is provided under this section. If at the end of the biennium a balance exists on the loan, the office of the adjutant general shall

request the legislative assembly for a deficiency appropriation to repay the loan.

<sup>192</sup> **SECTION 2. AMENDMENT.** Subsection 12 of section 54-16-04.1 of the North Dakota Century Code is amended and reenacted as follows:

12. Subsections 10 and 11 do not apply to federal highway administration emergency relief funding received by the state or to disaster or emergency recovery funding received by the state pursuant to ~~section 37-17.1-23~~chapter 37-17.1.

Approved April 12, 2023

Filed April 13, 2023

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<sup>192</sup> Section 54-16-04.1 was also amended by section 1 of Senate Bill No. 2029, chapter 472.

## CHAPTER 332

### HOUSE BILL NO. 1167

(Representatives Vetter, Motschenbacher, Rohr, D. Ruby, M. Ruby, Schauer, Steiner)  
(Senators Barta, Luick, Paulson, Vedaa, Wobbema)

AN ACT to create and enact a new subsection to section 37-17.1-05 of the North Dakota Century Code, relating to the governor's authority regarding polling places during a declared state of disaster or emergency.

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

<sup>193</sup> **SECTION 1.** A new subsection to section 37-17.1-05 of the North Dakota Century Code is created and enacted as follows:

The governor may not issue an executive order that suspends or amends a provision in a statute, order, or rule relating to a state or local requirement regarding minimum number of physical polling places.

Approved April 6, 2023

Filed April 10, 2023

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<sup>193</sup> Section 37-17.1-05 was also amended by section 2 of House Bill No. 1069, chapter 324.

## CHAPTER 333

### HOUSE BILL NO. 1071

(Political Subdivisions Committee)  
(At the request of the Adjutant General)

AN ACT to amend and reenact section 37-17.1-07 of the North Dakota Century Code, relating to local or regional emergency management organizations.

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

**SECTION 1. 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~~multicounty 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~~or by a local or ~~regional~~multicounty emergency management organization.
2. Each county shall maintain an emergency management organization that serves the entire county or must be a member of a ~~regional~~multicounty emergency management organization that serves more than one county or must be a member of the state regional emergency management program.
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~~based on 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~~multicounty emergency management organization shall prepare and keep current a local disaster or emergency operational plan for its area.
6. Each local or ~~regional~~multicounty 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.

7. Each local emergency management organization that is a member of the state regional emergency management program shall compensate the state an amount not to exceed fifty percent of the regional coordinator's salary and benefits. If multiple counties within a region participate in the state regional emergency management program, the amount of compensation to the state will be proportioned based on population.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 334

### HOUSE BILL NO. 1053

(Political Subdivisions Committee)  
(At the request of the Adjutant General)

AN ACT to amend and reenact section 37-17.1-10.1 of the North Dakota Century Code, relating to burn restrictions.

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

**SECTION 1. AMENDMENT.** Section 37-17.1-10.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **37-17.1-10.1. Burn ~~ban~~restrictions - Penalty.**

An order or proclamation under section 37-17.1-10 which includes a ~~ban~~restriction on open burning may provide for a penalty for a violation of the ~~ban~~restriction 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~~restriction established by a local order or proclamation under this section is guilty of a class B misdemeanor.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 335

### SENATE BILL NO. 2117

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

AN ACT to repeal section 37-17.3-11 of the North Dakota Century Code, relating to the statewide seamless base map fees.

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

**SECTION 1. REPEAL.** Section 37-17.3-11 of the North Dakota Century Code is repealed.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 336

### HOUSE BILL NO. 1182

(Representatives M. Ruby, Bellew, Kasper, Martinson, Steiner)  
(Senators Dever, Larsen, Meyer, Paulson, Wobbema)

AN ACT to create and enact a new section to chapter 37-18 of the North Dakota Century Code, relating to reimbursement for funeral services; and to provide an appropriation.

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

**SECTION 1.** A new section to chapter 37-18 of the North Dakota Century Code is created and enacted as follows:

##### **Veterans' service organization reimbursement.**

1. The department shall administer a program to reimburse a veterans' service organization for providing a funeral service at a military honors funeral.
2. Upon the request of a veterans' service organization, the department shall reimburse up to fifty dollars to one veterans' service organization per funeral for providing a funeral service during a military honors funeral. If a veterans' service organization has received federal reimbursement for providing a funeral service for a military honors funeral, the veterans' service organization may not apply for reimbursement under this section.
3. The veterans' service organization may authorize the playing of taps on a ceremonial bugle or a high-quality recording during a military honors funeral held in this state for a deceased veteran.
4. As used in this section, a "funeral service" includes a:
  - a. Folding of the flag;
  - b. Presentation of the flag;
  - c. Presentation of the state coin;
  - d. Playing of taps; and
  - e. Three volley salute.

**SECTION 2. APPROPRIATION - DEPARTMENT OF VETERANS' AFFAIRS - FUNERAL SERVICE REIMBURSEMENT.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$135,000, or so much of the sum as may be necessary, to the department of veterans' affairs for the purpose of providing reimbursement to a veterans' service organization that provides a funeral service under section 1 of this Act, for the biennium beginning July 1, 2023, and ending June 30, 2025.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 337

### HOUSE BILL NO. 1222

(Representatives Stemen, Cory, Dockter, Klemin, Mitskog, Mock, O'Brien, Pyle, M. Ruby)  
(Senators Kreun, Meyer, Vedaa)

AN ACT to amend and reenact section 37-19.1-01 and subsection 1 of section 37-19.1-02 of the North Dakota Century Code, relating to the definition of a veteran and required documentation when claiming veterans' preference for employment.

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

<sup>194</sup> **SECTION 1. AMENDMENT.** Section 37-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **37-19.1-01. Definitions.**

As used in this chapter:

1. "Agency" or "governmental agency" means all political subdivisions and the state, including any state agency, board, bureau, commission, department, officer, and any state institution or enterprise authorized to employ individuals either temporarily or permanently.
2. "Chief deputy" means the individual who is appointed by an elected or appointed official under express statutory authority to hire a chief deputy and who is authorized to act on behalf of that official. The term does not include an individual appointed to a position that must be filled under a competitive personnel system.
3. "Competitive personnel system" means a system that rates applicants for a position using an objective set of skills, knowledge, abilities, behaviors, or other characteristics required for the position.
4. "Disabled veteran" means a veteran who is found to be entitled to a service-connected disability rating as determined by the United States veterans' administration.
5. "Justifiable cause" means grounds for action that are in accord with sufficient reason that can be justified or defended as correct. Justifiable cause not to hire a veteran must be something specific to that individual which renders the individual unsuitable for the position.
6. "Political subdivision" means counties, cities, townships, and any other governmental entity created by state law which employs individuals either temporarily or permanently.

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<sup>194</sup> Section 37-19.1-01 was also amended by section 1 of House Bill No. 1250, chapter 338.

7. "Private secretary" means the individual who is appointed by an elected or appointed official under express legal authority to hire a private secretary or administrative assistant and who is authorized to handle correspondence, keep files, schedule appointments, and do other clerical work of a more personal and confidential nature for that official, but does not include an individual appointed to a position that must be filled under a competitive personnel system.
8. "Veteran" means an individual who:
  - a. Is a veteran as defined in subsection 1 of section 37-01-40; or
  - b. ~~Has~~ has serving in or has been honorably discharged from the national guard or a reserve unit ~~located within North Dakota and:~~
    - (1) ~~Has completed a minimum of twenty years of service; or~~
    - (2) ~~Served in a combat zone.~~

**SECTION 2. AMENDMENT.** Subsection 1 of section 37-19.1-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Veterans are entitled to preference, over all other applicants, in recruitment and selection processes by governmental agencies, provided that such veteran is a United States citizen at the time of application for employment. Veterans qualified for preference may not be disqualified from holding any position with an agency because of physical or mental disability, unless the disability renders them unable to properly perform the duties of the position applied for. To receive veterans' preference, an applicant must submit the following documentation:
  - a. An applicant claiming veterans' preference shall provide a copy of report of separation DD-214 or certification from the applicant's unit command that the individual is expected to be discharged or released from active duty in the uniformed services under other than dishonorable conditions not later than one hundred twenty days after the date of the submission of the certification.
  - b. An applicant claiming disabled veterans' preference shall provide a copy of report of separation DD-214 and a letter less than one year old from the veterans' administration indicating the veteran's disability status.
  - c. An applicant claiming veterans' preference as an eligible spouse of a deceased veteran shall provide a copy of the marriage certificate, the veteran's report of separation DD-214, and the veteran's death certificate.
  - d. An applicant claiming disabled veterans' preference as an eligible spouse of a disabled veteran shall provide a copy of the marriage certificate, the veteran's report of separation DD-214, and a letter less than one year old from the veterans' administration indicating the veteran's disability status.

Approved March 23, 2023

Filed March 23, 2023

## CHAPTER 338

### HOUSE BILL NO. 1250

(Representatives Stemen, Boschee, Dockter, Hagert, Heinert, Roers Jones, M. Ruby, Swiontek)  
(Senators Meyer, Patten, K. Roers, Vedaa)

AN ACT to amend and reenact sections 37-19.1-01 and 37-19.1-04 of the North Dakota Century Code, relating to the definition of designated electronic communication and the procedural requirements for refusing veterans preference.

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

<sup>195</sup> **SECTION 1. AMENDMENT.** Section 37-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **37-19.1-01. Definitions.**

As used in this chapter:

1. "Agency" or "governmental agency" means all political subdivisions and the state, including any state agency, board, bureau, commission, department, officer, and any state institution or enterprise authorized to employ individuals either temporarily or permanently.
2. "Chief deputy" means the individual who is appointed by an elected or appointed official under express statutory authority to hire a chief deputy and who is authorized to act on behalf of that official. The term does not include an individual appointed to a position that must be filled under a competitive personnel system.
3. "Competitive personnel system" means a system that rates applicants for a position using an objective set of skills, knowledge, abilities, behaviors, or other characteristics required for the position.
4. "Disabled veteran" means a veteran who is found to be entitled to a service-connected disability rating as determined by the United States veterans' administration.
5. "Designated electronic communication" means an agreed electronic system of communication used by a governmental agency and applicant as the designated official means of communicating nonselection. The designated electronic communication must include the applicant's electronic mail address. The term includes an electronic system for the transmittal and receipt of appeals to the department of veterans' affairs or a governmental agency and is limited to an electronic communication that provides notice to a sender that the communication has been delivered.

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<sup>195</sup> Section 37-19.1-01 was also amended by section 1 of House Bill No. 1222, chapter 337.

6. "Justifiable cause" means grounds for action that are in accord with sufficient reason that can be justified or defended as correct. Justifiable cause not to hire a veteran must be something specific to that individual which renders the individual unsuitable for the position.
- 6-7. "Political subdivision" means counties, cities, townships, and any other governmental entity created by state law which employs individuals either temporarily or permanently.
- 7-8. "Private secretary" means the individual who is appointed by an elected or appointed official under express legal authority to hire a private secretary or administrative assistant and who is authorized to handle correspondence, keep files, schedule appointments, and do other clerical work of a more personal and confidential nature for that official, but does not include an individual appointed to a position that must be filled under a competitive personnel system.
- 8-9. "Veteran" means an individual who:
- a. Is a veteran as defined in subsection 1 of section 37-01-40; or
  - b. Has been honorably discharged from the national guard or a reserve unit located within North Dakota and:
    - (1) Has completed a minimum of twenty years of service; or
    - (2) Served in a combat zone.

**SECTION 2. AMENDMENT.** Section 37-19.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**37-19.1-04. Refusal to give preference - Retaliatory action or removal - Remedies - Procedures.**

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 calendar days after receipt of notification by certified mail or through ~~the online recruiting solution system~~ a designated electronic communication 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 or designated electronic communication within fifteen calendar 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 or electronic mail address, and inform the applicant that if the applicant requests an appeal, the applicant must provide by mail or designated electronic communication 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 ~~mailed~~submitted to the commissioner of veterans' affairs by certified mail or electronic means designated by the commissioner. A copy of the written request must be ~~mailed~~provided to the employer or employing agency by certified mail or electronic means designated by 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.

2. Any person who has exercised the right to an employment preference under this chapter, and who, within one year after exercise of that right:
  - a. Is discharged;
  - b. Has had compensation reduced; or
  - c. Is otherwise subject to action by the employing agency designed to cause the veteran or qualified veteran's spouse to resign or quit employment, is entitled to a hearing if the person believes that the employing agency took any of the above-described action due to the exercise of employment preference. The hearing must be held before a hearing officer as provided in subsection 3. If the hearing officer finds that the employing agency took any of the actions described in subdivision a, b, or c due to the person's exercise of the right to an employment preference, the hearing officer shall order the employing agency to cease and desist from such action or to reinstate the veteran or qualified veteran's spouse. The request for a hearing under this subsection must be in writing addressed to the commissioner of veterans' affairs. The request for a hearing must identify the employer or employing agency that took any action described in subdivision a, b, or c and describe the action taken. A copy of the written request must be mailed to the employer or employing agency. The request, addressed to the commissioner of veterans' affairs and the copy to the employer or employing agency, must be made by certified mail within fifteen calendar days after any action described in subdivision a, b, or c is taken by the employing agency.
3. Within fifteen calendar days after receiving a request from an applicant or person under subsection 1 or 2, the commissioner of veterans' affairs may request the director of the office of administrative hearings to designate a hearing officer to hear the grievance arising under subsection 1 or 2. The commissioner shall notify the employer or employing agency that a request for a hearing has been made. The office of administrative hearings is entitled to be reimbursed by the employer or employing agency for all hearing officer services rendered and expenses incurred in performing these duties. The hearing officer shall hold the hearing within thirty calendar days after the hearing officer request is received by the director of the office of administrative hearings. Notwithstanding the time limitation, the hearing officer may postpone or continue the hearing for good cause, at the request of a party. At the hearing, both parties may be represented by counsel. If the hearing is requested pursuant to subsection 1, the employing agency has the burden of proving that the veteran or the qualified veteran's spouse did not possess the qualifications required for the position. If the hearing is requested pursuant to subsection 2, the employing agency has the burden of proving that any action which was taken was not taken because of exercise of the right to an employment preference. The hearing officer shall issue findings of fact, conclusions of law, and an order within fifteen calendar days after the hearing is concluded, briefs filed, and arguments closed. The order is binding on both parties, subject to appeal.

4. Any party aggrieved by the findings of fact, conclusions of law, and order of the hearing officer may appeal in the manner provided for in chapter 28-32, except that the appellant need not execute an undertaking.

Approved March 15, 2023

Filed March 16, 2023

# MINING AND GAS AND OIL PRODUCTION

## CHAPTER 339

### HOUSE BILL NO. 1272

(Representatives J. Olson, Dyk, Lefor, Novak, Pyle, Rios, Timmons)  
(Senators Kannianen, Kessel, Patten)

AN ACT to amend and reenact subdivision a of subsection 1 of section 38-08-04 of the North Dakota Century Code, relating to the jurisdiction of the industrial commission and reviewing the enhanced oil recovery potential status of a well.

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

<sup>196</sup> **SECTION 1. AMENDMENT.** Subdivision a of subsection 1 of section 38-08-04 of the North Dakota Century Code is amended and reenacted as follows:

a. To require:

- (1) Identification of ownership of oil or gas wells, producing leases, tanks, plants, structures, and facilities for the transportation or refining of oil and gas.
- (2) The making and filing with the industrial commission of all resistivity, radioactivity, and mechanical well logs and the filing of directional surveys, if taken, and the filing of reports on well location, drilling, and production.
- (3) The drilling, casing, operation, and plugging of wells in such manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas strata, the pollution of freshwater supplies by oil, gas, or saltwater, and to prevent blowouts, cavings, seepages, and fires.
- (4) The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with this chapter, and the rules and orders of the industrial commission, including without limitation a bond covering the operation of any underground gathering pipeline transferring oil or produced water from a production facility for disposal, storage, or sale purposes, except that if the commission requires a bond to be furnished, the person required to furnish the bond may elect to deposit under such terms and conditions as the industrial commission may prescribe a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which an operator assures faithful

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<sup>196</sup> Section 38-08-04 was also amended by section 1 of Senate Bill No. 2058, chapter 340.

performance of all requirements of this chapter and the rules and orders of the industrial commission.

- (5) That the production from wells be separated into gaseous and liquid hydrocarbons, and that each be accurately measured by such means and upon such standards as may be prescribed by the commission.
- (6) The operation of wells with efficient gas-oil and water-oil ratios, and to fix these ratios.
- (7) Certificates of clearance in connection with the transportation or delivery of oil, gas, or any product.
- (8) Metering or other measuring of oil, gas, or product related to production in pipelines, gathering systems, storage tanks, barge terminals, loading racks, refineries, or other places, by meters or other measuring devices approved by the commission.
- (9) Every person who produces, sells, purchases, acquires, stores, transports, refines, disposes of, or processes oil, gas, saltwater, or other related oilfield fluids in this state to keep and maintain within this state complete and accurate records of the quantities thereof, which records must be available for examination by the commission or its agents at all reasonable times, and to file with the commission reports as the commission may prescribe with respect to oil or gas or the products thereof. An oil and gas production report need not be notarized but must be signed by the person submitting the report.
- (10) The payment of fees for services performed. The amount of the fee shall be set by the commission based on the anticipated actual cost of the service rendered. Unless otherwise provided by statute, all fees collected by the commission must be deposited in the general fund of this state, according to procedures established by the state treasurer.
- (11) The filing free of charge of samples and core chips and of complete cores when requested in the office of the state geologist within six months after the completion or abandonment of the well.
- (12) The placing of wells in abandoned-well status which have not produced oil or natural gas in paying quantities for one year. A well in abandoned-well status must be promptly returned to production in paying quantities, approved by the commission for temporarily abandoned status, approved by the commission for enhanced oil recovery potential status, or plugged and reclaimed within six months. If none of the ~~three~~<sup>four</sup> preceding conditions are met, the industrial commission may require the well to be placed immediately on a single-well bond in an amount equal to the cost of plugging the well and reclaiming the well site. In setting the bond amount, the commission shall use information from recent plugging and reclamation operations. After a well has been in abandoned-well status for one year, the well's equipment, all well-related equipment at the well site, and salable oil at the well site are subject to forfeiture by the commission. If the commission exercises this authority, section 38-08-04.9 applies. After a well has been in abandoned-well status for one year, the single-well bond referred to above, or any other bond

covering the well if the single-well bond has not been obtained, is subject to forfeiture by the commission. A surface owner may request a review of the enhanced oil recovery potential status of a well that has been on enhanced oil recovery potential status for at least twelve years. The commission shall require notice and hearing to review the enhanced oil recovery potential status. After notice and hearing, the surface owner may request a review of the enhanced oil recovery potential status every two years. A surface owner may request a review of the temporarily abandoned status of a well that has been on temporarily abandoned status for at least seven years. The commission shall require notice and hearing to review the temporarily abandoned status. After notice and hearing, the surface owner may request a review of the temporarily abandoned status every two years.

Approved March 28, 2023

Filed March 29, 2023

## CHAPTER 340

### SENATE BILL NO. 2058

(Energy and Natural Resources Committee)  
(At the request of the Department of Mineral Resources)

AN ACT to amend and reenact section 38-08-04 of the North Dakota Century Code, relating to the jurisdiction of commission and adding wellhead and equipment located at or on oil or gas well sites.

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

<sup>197</sup> **SECTION 1. AMENDMENT.** Section 38-08-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **38-08-04. Jurisdiction of commission.**

1. The commission has continuing jurisdiction and authority over all persons and property, public and private, necessary to enforce effectively the provisions of this chapter. The commission has authority, and it is its duty, to make such investigations as it deems proper to determine whether waste exists or is imminent or whether other facts exist which justify action by the commission. The commission has the authority:
  - a. To require:
    - (1) Identification of ownership of oil or gas wells, producing leases, tanks, plants, structures, and facilities for the transportation or refining of oil and gas.
    - (2) The making and filing with the industrial commission of all resistivity, radioactivity, and mechanical well logs and the filing of directional surveys, if taken, and the filing of reports on well location, drilling, and production.
    - (3) The drilling, casing, operation, and plugging of wells in such manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas strata, the pollution of freshwater supplies by oil, gas, or saltwater, and to prevent blowouts, cavings, seepages, and fires.
    - (4) The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with this chapter, and the rules and orders of the industrial commission, including without limitation a bond covering the operation of any underground gathering pipeline transferring oil or produced water from a production facility for disposal, storage, or sale purposes, except that if the commission requires a bond to be furnished, the person required to furnish the bond may elect to deposit under such terms and conditions as the

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<sup>197</sup> Section 38-08-04 was also amended by section 1 of House Bill No. 1272, chapter 339.

industrial commission may prescribe a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which an operator assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.

- (5) That the production from wells be separated into gaseous and liquid hydrocarbons, and that each be accurately measured by such means and upon such standards as may be prescribed by the commission.
- (6) The operation of wells with efficient gas-oil and water-oil ratios, and to fix these ratios.
- (7) Certificates of clearance in connection with the transportation or delivery of oil, gas, or any product.
- (8) Metering or other measuring of oil, gas, or product related to production in pipelines, gathering systems, storage tanks, barge terminals, loading racks, refineries, or other places, by meters or other measuring devices approved by the commission.
- (9) Every person who produces, sells, purchases, acquires, stores, transports, refines, disposes of, or processes oil, gas, saltwater, or other related oilfield fluids in this state to keep and maintain within this state complete and accurate records of the quantities thereof, which records must be available for examination by the commission or its agents at all reasonable times, and to file with the commission reports as the commission may prescribe with respect to oil or gas or the products thereof. An oil and gas production report need not be notarized but must be signed by the person submitting the report.
- (10) The payment of fees for services performed. The amount of the fee shall be set by the commission based on the anticipated actual cost of the service rendered. Unless otherwise provided by statute, all fees collected by the commission must be deposited in the general fund of this state, according to procedures established by the state treasurer.
- (11) The filing free of charge of samples and core chips and of complete cores when requested in the office of the state geologist within six months after the completion or abandonment of the well.
- (12) The placing of wells in abandoned-well status which have not produced oil or natural gas in paying quantities for one year. A well in abandoned-well status must be promptly returned to production in paying quantities, approved by the commission for temporarily abandoned status, or plugged and reclaimed within six months. If none of the three preceding conditions are met, the industrial commission may require the well to be placed immediately on a single-well bond in an amount equal to the cost of plugging the well and reclaiming the well site. In setting the bond amount, the commission shall use information from recent plugging and reclamation operations. After a well has been in abandoned-well status for one year, the well's equipment, all well-related equipment at the well site, and salable oil at the well site are subject to forfeiture by the commission. If the commission exercises this authority, section 38-08-04.9 applies. After a

well has been in abandoned-well status for one year, the single-well bond referred to above, or any other bond covering the well if the single-well bond has not been obtained, is subject to forfeiture by the commission. A surface owner may request a review of the temporarily abandoned status of a well that has been on temporarily abandoned status for at least seven years. The commission shall require notice and hearing to review the temporarily abandoned status. After notice and hearing, the surface owner may request a review of the temporarily abandoned status every two years.

b. To regulate:

- (1) The drilling, producing, and plugging of wells, the restoration of drilling and production sites, and all other operations for the production of oil or gas.
- (2) The shooting and chemical treatment of wells.
- (3) The spacing of wells.
- (4) Operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations.
- (5) Disposal of saltwater and oilfield wastes.
  - (a) The commission shall give all affected counties written notice of hearings in such matters at least fifteen days before the hearing.
  - (b) The commission may consider, in addition to other authority granted under this section, safety of the location and road access to saltwater disposal wells, treating plants, and all associated facilities.
- (6) The underground storage of oil or gas.
- (7) The location and operation of wellhead and lease equipment, oil and gas separators, emulsion treaters, boilers, electric generators, flares, newly constructed underground gathering pipelines, flare mitigation systems, and all other equipment located at or on an oil or gas well site or underground gathering pipeline facility.

c. To limit and to allocate the production of oil and gas from any field, pool, or area and to establish and define as separate marketing districts those contiguous areas within the state which supply oil and gas to different markets, and to limit and allocate the production of oil and gas for each separate marketing district.

d. To classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter, to classify and determine the status and depth of wells that are stripper well property as defined in section 57-51.1-01, to certify to the tax commissioner which wells are stripper wells as defined in section 57-51.1-01 and the depth of those wells, and to certify to the tax commissioner which wells involve secondary or tertiary recovery operations as defined in section 57-51.1-01, and the

date of qualification for the oil extraction tax exemption for secondary and tertiary recovery operations.

- e. To adopt and to enforce rules and orders to effectuate the purposes and the intent of this chapter and the commission's responsibilities under chapter 57-51.1. When adopting a rule, issuing an order, or creating a policy, the commission shall give due consideration to the effect of including locations within this state which may also be under the jurisdiction of the federal government or a tribal government. When reporting information resulting from adopting a rule, issuing an order, or creating a policy that affects locations within this state which may also be under the jurisdiction of the federal government or a tribal government, the commission shall provide sufficient information to indicate the effect of including locations that may also be under the regulatory jurisdiction of the federal government or a tribal government.
- f. To provide for the confidentiality of well data reported to the commission if requested in writing by those reporting the data for a period not to exceed six months. However, the commission may release:
  - (1) Volumes injected into a saltwater injection well.
  - (2) Information from the spill report on a well on a site at which more than ten barrels of fluid, not contained on the well site, was released for which an oilfield environmental incident report is required by law.
2. A person controlling or operating a well, pipeline, receiving tank, storage tank, treating plant, or other receptacle or production facility associated with oil and gas, or with water production, injection, processing, or well servicing, shall report to the commission any leak, spill, or release of fluid. A report to the commission is not required if the leak, spill, or release is crude oil, produced water, or natural gas liquids in a quantity of less than ten barrels cumulative over a fifteen-day time period, remains on the site or facility, and is on a well site where the well was spud after September 1, 2000, or on a facility, other than a well site, constructed after September 1, 2000.
3. Any written violation notice issued by the commission regarding the notification of a fire, leak, spill, blowout, or leak and spill cleanup must be placed in the well file or facility file and the files must be available for review by the surface owner.
4. Nothing in this section may be interpreted to modify or supersede applicable requirements related to oil and gas production under any of the following:
  - a. Chapter 23.1-06, the federal Clean Air Act [42 U.S.C. 7401 et seq.], as amended, or rules adopted pursuant to either chapter 23.1-06 or the federal Clean Air Act.
  - b. Chapter 61-28, the federal Clean Water Act [33 U.S.C. 1251 et seq.], as amended, or rules adopted pursuant to either chapter 61-28 or the federal Clean Water Act.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 341

### SENATE BILL NO. 2057

(Energy and Natural Resources Committee)  
(At the request of the Department of Mineral Resources)

AN ACT to amend and reenact subsection 6 of section 38-22-06 of the North Dakota Century Code, relating to the delivery of permit hearing notices.

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

**SECTION 1. AMENDMENT.** Subsection 6 of section 38-22-06 of the North Dakota Century Code is amended and reenacted as follows:

- ~~Service of hearing~~Hearing notices required by this section must conform to ~~personal service provisions in rule 4 of the North Dakota Rules of Civil Procedure~~be completed by mail or third-party commercial delivery, tracking service requested, and addressed to the last address of record for the individual or entity to be served. The notice by publication set forth in subsection 2 applies to all individuals and entities that cannot be served under this section.

Approved March 14, 2023

Filed March 15, 2023

# MOTOR VEHICLES

## CHAPTER 342

### SENATE BILL NO. 2191

(Senators Burckhard, Axtman, Barta)  
(Representatives Ista, Karls)

AN ACT to amend and reenact subsection 4 of section 39-01-15 of the North Dakota Century Code, relating to adding physical therapists as health care professionals who can sign statements for applications for mobility-impaired parking certificates; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 39-01-15 of the North Dakota Century Code is amended and reenacted as follows:

4. The director may issue a special identifying certificate to any mobility-impaired applicant upon submission by the applicant of a completed application and a written or electronic statement issued by a qualified physician, physician assistant, chiropractor, physical therapist, or an advanced practice registered nurse to the director that the applicant is a mobility-impaired person within the criteria of subsection 2. The director shall waive the requirement for a written or electronic statement from a qualified physician, physician assistant, chiropractor, physical therapist, or an advanced practice registered nurse if the applicant has previously submitted an application containing a certification from a qualified physician, physician assistant, chiropractor, physical therapist, or an advanced practice registered nurse that the applicant's impairment is not reversible. The application must include the information required by the director. The physician's, physician assistant's, chiropractor's, physical therapist's, or advanced practice registered nurse's statement must describe how the impairment limits the applicant's mobility and daily life functions of the applicant. The certificate is valid for a period, not to exceed three years, as determined by the director. A physician, physician assistant, chiropractor, physical therapist, or an advanced practice registered nurse who provides a false statement that an individual is mobility impaired for the purpose of that individual obtaining a certificate under this subsection is guilty of an infraction for which a minimum fine of one hundred dollars must be imposed. A certificate issued under this subsection must be nine and one-half inches [24.13 centimeters] in height and three inches [7.62 centimeters] in width and must bear, in white on blue, the internationally accepted symbol of access for the mobility impaired. The certificate must bear the expiration date and registration number assigned by the director. The director shall adopt rules governing the issuance of the certificate. A temporary certificate, valid for an initial period not to exceed three months, may be issued by the director for a fee of three dollars upon application supported by a physician's, physician assistant's, chiropractor's, physical therapist's, or an advanced practice registered nurse's statement. The director may issue a maximum of one

additional temporary certificate for a fee of three dollars. The temporary certificate may be extended an additional period, not to exceed three months, upon application supported by a physician's, physician assistant's, chiropractor's, physical therapist's, or an advanced practice registered nurse's statement that the extension is warranted. Temporary certificates must be the same size as other certificates issued under this section and must be white on red. The director may issue a maximum of one additional certificate, if the applicant does not have number plates issued under section 39-04-10.2 or under subdivision j of subsection 2 of section 39-04-18, to a mobility-impaired individual to whom a certificate has been issued under this subsection. The additional certificates may ~~only~~ be used only by or on behalf of the mobility-impaired individual.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 343

### HOUSE BILL NO. 1169

(Representatives D. Ruby, K. Anderson, Fegley, Nathe, Nelson, M. Ruby, Schatz)  
(Senators Dever, Mathern, Paulson, Rust)

AN ACT to amend and reenact section 39-04-10.2 of the North Dakota Century Code, relating to license plates for mobility-impaired individuals.

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

**SECTION 1. AMENDMENT.** Section 39-04-10.2 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-04-10.2. Special plates for mobility-impaired individuals.**

The director may issue, without charge, upon application and payment of the regular license fee, plates marked with the international symbol of accessibility for the mobility impaired, to a motor vehicle owner possessing a parking certificate issued under subsection 4 of section 39-01-15. One set of plates per mobility-impaired individual may be issued to a vehicle the mobility-impaired individual is not listed as the owner of if the vehicle is designated for the exclusive use of transporting that mobility-impaired individual. This section is not applicable to an applicant possessing more than one parking certificate issued under subsection 4 of section 39-01-15.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 344

### HOUSE BILL NO. 1336

(Representatives Koppelman, Christy, Heinert, Holle, Mock, S. Olson, Timmons,  
Wagner, Warrey)  
(Senators Estenson, Weston)

AN ACT to amend and reenact section 39-04-10.16 of the North Dakota Century Code, relating to special license plates for emergency responders, firefighters, and search and rescue personnel.

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

**SECTION 1. AMENDMENT.** Section 39-04-10.16 of the North Dakota Century Code is amended and reenacted as follows:

**39-04-10.16. Special vehicle license plates for volunteer emergency responders and volunteer firefighters, and volunteer search and rescue personnel.**

1. As used in this section:

- a. "Fire department" means a certified city fire department, certified rural fire department, or certified fire protection district that has filed a certificate of existence under section 18-04-02.
- b. "Volunteer emergency responder" means an emergency medical services provider certified by the department of health and human services and the individual's squad leader for a continuous period exceeding two years and who receives an annual compensation of less than ten thousand dollars.
- c. "Volunteer firefighter" means an active member in good standing with a North Dakota fire department who has had a continuous membership for a period exceeding two years and receives an annual compensation of less than ten thousand dollars from the fire department.
- d. "Volunteer search and rescue personnel" includes water and dive rescue personnel and means an active member:
  - (1) Of an organization that at the request of a state entity, political subdivision, or volunteer fire department deploys, coordinates, and uses available resources and personnel in locating, relieving the distress of, preserving the life of, or extracting an individual who is missing, trapped, or lost in remote areas or waters of the state;
  - (2) In good standing and with continuous membership for a period exceeding two years with an organization under paragraph 1; and
  - (3) Who receives an annual compensation of less than ten thousand dollars from an organization under paragraph 1.

2. Upon application, the director shall issue red personalized plates to volunteer emergency responders and, volunteer firefighters, and volunteer search and rescue personnel at no initial or annual cost to the volunteers. Qualified applicants are eligible to receive one set of plates. Plates may not be displayed on a vehicle with a registered gross weight exceeding twenty thousand pounds [9071.85 kilograms]. The first three digits of the plate are the last three digits of the zip code where the volunteer's department or organization is located. The remaining space may contain up to three characters of the volunteer's choosing. This plate serves as an entrance pass to all North Dakota state parks. In cooperation with the volunteer organizations, the director shall designate qualifications and verification procedures for the plates issued under this section.
3. On termination of the registrant's eligibility, the registrant shall return the plates to the director, who shall reissue for a fee of not more than five dollars, and upon payment of applicable registration fees, another number plate to which that registrant is entitled under this chapter.
4. If a registrant fails to return the plates to the director, the director, upon notification of the registrant's ineligibility, may revoke the plates and reissue for a fee of not more than five dollars, and upon payment of applicable registration fees, another number plate for which the registrant is entitled under this chapter.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 345

### HOUSE BILL NO. 1080

(Transportation Committee)  
(At the request of the Department of Transportation)

AN ACT to amend and reenact section 39-04-55 of the North Dakota Century Code, relating to allowing electronic proof of motor vehicle registration.

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

**SECTION 1. AMENDMENT.** Section 39-04-55 of the North Dakota Century Code is amended and reenacted as follows:

**39-04-55. Registration card to be carried in or on vehicle - Inspection of card - Penalty.**

The registration card issued for a vehicle must be carried in the driver's compartment of the vehicle or on an electronic device in the possession of the driver or, in the case of a housetrailer or mobile home or a trailer or semitrailer, regardless of when such vehicle was acquired, inside or on the vehicle, at all times while the vehicle is being operated upon a highway in this state. The card registration is subject to inspection by any peace officer or highway patrol officer. Upon request of an inspection by any peace officer or highway patrol officer, a driver may produce either a registration card or electronic registration as provided by the department. An electronic registration must be designed so that there is no need for the registration holder to relinquish possession of the device, in which the electronic registration is installed, to present the registration, or for the individual to whom the registration is presented to access the verification system to confirm the validity of the registration. Any person violating this section must be assessed a fee of twenty dollars. However, a person cited for violation of this section may not be found to have committed the violation if the person, within fourteen days after being cited produces and displays to the office of the prosecutor where the matter is pending, a registration card valid at the time the person was cited. A peace officer or highway patrol officer, upon citing a person for violating this section, shall inform the person that a violation will be considered as not having occurred if the person produces and displays a valid registration card in the manner provided in this section.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 346

### SENATE BILL NO. 2111

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to amend and reenact section 39-05-09 of the North Dakota Century Code, relating to certificate of title to be allowed in electronic form.

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

**SECTION 1. 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 in paper or electronic form, 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~~ Forms must be made available on the reverse side of the paper version or electronically 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 47-10-27.

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.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 347

### HOUSE BILL NO. 1318

(Representatives Kasper, Hoverson, Koppelman, Rohr, D. Ruby, M. Ruby, Steiner)  
(Senators Myrdal, Vedaa)

AN ACT to amend and reenact subsection 2 of section 39-06-03.1, subsection 5 of section 39-06-14, and subsection 1 of section 39-06-14.2 of the North Dakota Century Code, relating to nondriver photo identification cards and operator licenses for noncitizens.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 39-06-03.1 of the North Dakota Century Code is amended and reenacted as follows:

2. The director shall issue a nondriver color photo identification card to any resident who at the time of application is not a citizen of the United States and who fulfills the requirements of this section. The identification card must be designed in a manner to clearly make the card distinguishable from a similar card issued to a citizen of the United States and resident of this state. Upon the issuance of an identification card, the department of transportation shall provide a written notice that indicates the naturalized individual shall contact the department of transportation to update the individual's citizenship status. The individual shall update the citizenship status within forty-five days following naturalization. The director shall replace the card may be replaced with a card issued to a citizen of this country and resident of this state only when proof of United States citizenship is provided by the individual and any applicable replacement fee listed in section 39-06-49 is paid. For identification cards issued under this subsection before August 1, 2023, the department of transportation shall provide by mail to each cardholder a written notice that indicates within the forty-five days following naturalization, the naturalized individual shall contact the department of transportation to update the individual's citizenship status.

**SECTION 2. AMENDMENT.** Subsection 5 of section 39-06-14 of the North Dakota Century Code is amended and reenacted as follows:

5. The director shall issue an operator's license to any resident who at the time of application is not a citizen of the United States and who fulfills the requirements of this section. The license must be designed in a manner to distinguish the license clearly from a similar license issued to a citizen of the United States and resident of this state. Upon the issuance of a license, the department of transportation shall provide a written notice that indicates the naturalized individual shall contact the department of transportation to update the individual's citizenship status. The individual shall update the citizenship status within forty-five days following naturalization. The director shall replace the license issued under this subsection may be replaced with a card issued to a citizen of this country and resident of this state only when proof of United States citizenship is provided by the individual and the replacement fee listed in section 39-06-49 is paid. For licenses issued under this subsection before August 1, 2023, the department of transportation shall provide by mail to each

licenseholder a written notice that indicates within the forty-five days following naturalization, the naturalized individual shall contact the department of transportation to update the individual's citizenship status.

**SECTION 3. AMENDMENT.** Subsection 1 of section 39-06-14.2 of the North Dakota Century Code is amended and reenacted as follows:

1. The director shall provide central identity management for all state agencies for citizens who possess a nondriver photo identification card or driver's license ~~utilizing~~using driver record data. Upon an individual's change in citizenship status under section 39-06-03.1 or 39-06-14, the director shall report to the secretary of state the individual's updated information as required under section 16.1-02-09.

Approved April 4, 2023

Filed April 5, 2023

## CHAPTER 348

### HOUSE BILL NO. 1280

(Representatives Roers Jones, Bahl, Ista, Klemin, Satrom, Schneider)  
(Senators Hogue, Larson, Sickler)

AN ACT to create and enact a new subsection to section 39-06.1-11 and sections 39-06-36.1 and 54-12-27.1 of the North Dakota Century Code, relating to temporary restricted licenses, restoration of revoked or suspended licenses upon successful completion of drug court, and partial suspension of twenty-four seven sobriety program for drug court program participants; to amend and reenact subsections 3 and 7 of section 39-06.1-11 of the North Dakota Century Code, relating to temporary restricted licenses; and to declare an emergency.

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

**SECTION 1.** Section 39-06-36.1 of the North Dakota Century Code is created and enacted as follows:

**39-06-36.1. Restoration of revoked or suspended licenses upon successful completion of drug court.**

Upon an individual's successful completion of an approved adult drug court program, if ordered by the district court, the director shall reinstate the driving privileges of the individual for any noncommercial license suspension or revocation imposed under law. A reinstatement fee is not required for reinstatement of driving privileges under this section.

<sup>198</sup> **SECTION 2. AMENDMENT.** Subsection 3 of section 39-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~AFor any suspension or revocation imposed under the law, the director shall issue a temporary restricted license must be issued in accordance with subsection 7 if the offender is participating in and compliant with the twenty-four seven sobriety program under chapter 54-12 or if the offender has not committed an offense for a period of one year before the date of the filing of a written application. The application must be accompanied by:~~
  - a. Proof of financial responsibility and a report from an appropriate licensed addiction treatment program and, if prescribed, proof of compliance with attendance rules in an appropriate licensed addiction treatment program; or
  - b. ~~If the offender is participating in the drug court twenty-four seven sobriety program or other court ordered treatment or sobriety program, a recommendation from the district court, proof of program participation.~~

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<sup>198</sup> Section 39-06.1-11 was also amended by section 4 of House Bill No. 1280, chapter 348, section 18 of House Bill No. 1038, chapter 65, and section 3 of House Bill No. 1280, chapter 348.

<sup>199</sup> **SECTION 3. AMENDMENT.** Subsection 7 of section 39-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

7. If an offender has been charged with, or convicted of, a second or subsequent violation of section 39-08-01 or equivalent ordinance, or if the offender's license is subject to suspension under chapter 39-20 and the offender's operator's license is not subject to an unrelated suspension or revocation in this state, the director shall issue a temporary restricted license to the offender upon the restriction the offender participate in the twenty-four seven sobriety program under chapter 54-12. The offender shall submit an application to the director for a temporary restricted license along with submission of proof of financial responsibility and proof of participation in the twenty-four seven sobriety program to receive a temporary restricted license.

<sup>200</sup> **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 is participating in an approved drug court program, the court may order issuance of a temporary restricted license. Upon application by the offender, the director shall issue a temporary restricted license to the participant subject to conditions specified by the court.

- a. The application must be accompanied by proof of financial responsibility, the court's order, and the designated reinstatement fee.
- b. For purposes of this subsection, "approved drug court program" means a district court-supervised treatment program approved by the supreme court.

**SECTION 5.** Section 54-12-27.1 of the North Dakota Century Code is created and enacted as follows:

**54-12-27.1. Partial suspension of twenty-four seven sobriety program for drug court program participants.**

1. For purposes of this section, "approved drug court program" means a district court-supervised treatment program approved by the supreme court.
2. A district court may suspend any ordered period of participation in the twenty-four seven sobriety program, including mandatory participation required by law, for an offender participating in an approved drug court program while under supervised probation with the department of corrections and rehabilitation.
3. A district court suspending participation in the twenty-four seven sobriety program shall issue a certificate of waiver of twenty-four seven sobriety program participation.

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<sup>199</sup> Section 39-06.1-11 was also amended by section 4 of House Bill No. 1280, chapter 348, section 18 of House Bill No. 1038, chapter 65, and section 2 of House Bill No. 1280, chapter 348.

<sup>200</sup> Section 39-06.1-11 was also amended by section 18 of House Bill No. 1038, chapter 65, section 2 of House Bill No. 1280, chapter 348, and section 3 of House Bill No. 1280, chapter 348.

4. For purposes of issuance of a temporary restricted operator's license under section 39-06.1-11, the director of the department of transportation shall treat a court certificate of waiver of twenty-four seven sobriety program participation as if the offender was participating in the twenty-four seven sobriety program.

**SECTION 6. EMERGENCY.** Sections 1, 2, 3, and 4 of this Act are declared to be an emergency measure.

Approved March 22, 2023

Filed March 23, 2023

## CHAPTER 349

### HOUSE BILL NO. 1417

(Representatives Nelson, Louser, O'Brien)  
(Senators Klein, Vedaa)

AN ACT to amend and reenact subsection 1 of section 39-06.1-10 of the North Dakota Century Code, relating to entries against a driving record.

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

<sup>201</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

1. If a report of a conviction of a traffic offense, or admission or adjudication of a traffic violation is received by the director, the director shall proceed to enter the proper points on the licensee's driving record, ~~unless the points assigned to the violation are two or less. If the points assigned to the violation are two or less, the violation and points may not be entered on the driving record but must be recorded separately, and the separate record is not available to the public. Points from a violation in which the points are two or less are considered a part of the driving record for the sole purpose of point reduction under section 39-06.1-13 and for purposes of license suspension.~~ If the driving record shows that the licensee has accumulated a total of twelve or more points, assigned on the basis of the schedule contained in subsection 3, the director shall notify the licensee of the director's intention to suspend the operator's license under section 39-06-33. For the purposes of this chapter, the director also may receive and act on reports of traffic offense convictions forwarded by federal, military, and tribal courts in this state.

Approved March 29, 2023

Filed March 30, 2023

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<sup>201</sup> Section 39-06.1-10 was also amended by section 1 of House Bill No. 1061, chapter 350.

## CHAPTER 350

### HOUSE BILL NO. 1061

(Transportation Committee)  
(At the request of the Highway Patrol)

AN ACT to create and enact a new subsection to section 39-21-39 and section 39-21-39.1 of the North Dakota Century Code, relating to windows impairing vision of a driver; and to amend and reenact paragraph 16 of subdivision a of subsection 3 of section 39-06.1-10 and sections 39-10-16 and 39-10-24 of the North Dakota Century Code, relating to entries against driving record, rotary traffic islands, and stop and yield signs.

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

<sup>202</sup> **SECTION 1. AMENDMENT.** Paragraph 16 of subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

- (16) Driving on wrong side of road in violation of 2 points  
section 39-10-08, 39-10-14, or  
subsection 1, 2, or 3 of section 39-10-16, or  
equivalent ordinances

**SECTION 2. AMENDMENT.** Section 39-10-16 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-10-16. One-way roadways and rotary traffic islands.**

1. The director and local authorities with respect to highways under their respective jurisdictions may designate any highway, roadway, part of a roadway, or specific lanes upon which vehicular traffic shall proceed in one direction at all or such times as shall be indicated by official traffic-control devices.
2. Upon a roadway so designated for one-way traffic, a vehicle shall be driven only in the direction designated at all or at such times as shall be indicated by official traffic-control devices.
3. A vehicle passing around a rotary traffic island must be driven only to the right of such island.
4. After a vehicle enters a rotary traffic island, the vehicle may not exit from any position within the rotary traffic island without first giving a signal of intention to exit the rotary traffic island.

**SECTION 3. AMENDMENT.** Section 39-10-24 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>202</sup> Section 39-06.1-10 was also amended by section 1 of House Bill No. 1417, chapter 349.

**39-10-24. Stop signs and yield signs.**

1. Preferential right of way may be indicated by stop signs or yield signs as authorized in section 39-07-03.
2. Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After having stopped, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways and shall yield the right of way to any other vehicle previously stopped for another stop sign at the intersection if the intersection is clear for each driver to proceed.
3. The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for the existing conditions and, if required for safety to stop, shall stop at a clearly marked stop line, or, if none, before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After slowing or stopping, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection or junction of roadways. Provided, however, that if a driver is involved in a collision with a vehicle in the intersection or junction of roadways after driving past a yield sign without stopping, such collision is deemed prima facie evidence of the driver's failure to yield the right of way.

**SECTION 4.** A new subsection to section 39-21-39 of the North Dakota Century Code is created and enacted as follows:

Subsection 4 does not apply to nonreflective sunscreening or window tinting material above the AS-1 line or within the top five inches [12.7 centimeters] of the windshield.

**SECTION 5.** Section 39-21-39.1 of the North Dakota Century Code is created and enacted as follows:

**39-21-39.1. Windshield impairing vision of drivers.**

A windshield may not be shattered or in such a defective condition that the windshield materially impairs or obstructs the driver's clear view.

Approved April 20, 2023

Filed April 21, 2023

## CHAPTER 351

### SENATE BILL NO. 2112

(Transportation Committee)  
(At the request of the Department of Transportation)

AN ACT to create and enact section 39-06.2-08.2 of the North Dakota Century Code, relating to the drug and alcohol clearinghouse requirements for commercial drivers.

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

**SECTION 1.** Section 39-06.2-08.2 of the North Dakota Century Code is created and enacted as follows:

**39-06.2-08.2. Commercial driver's license drug and alcohol clearinghouse requirements.**

1. The director shall query a federal drug and alcohol clearinghouse before issuing, renewing, upgrading, or transferring a commercial driver's license or commercial learner's permit and review the driver's information when notified by the clearinghouse of a status change.
2. The director shall downgrade or remove the commercial driving privilege from the license if the licensee is found to be in violation or noncompliance with the clearinghouse requirements and until the driver complies with the return-to-duty requirements.
3. If the driver complies with the return-to-duty requirements pursuant to the limitations of 49 CFR Part 392, subpart B, the director shall upgrade the license of a driver which was downgraded under this section.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 352

### HOUSE BILL NO. 1506

(Representatives Roers Jones, Frelich, Mock, Motschenbacher, D. Ruby, Wagner)  
(Senators Barta, Myrdal)

AN ACT to create and enact a new section to chapter 39-10.1 of the North Dakota Century Code, relating to bicycling or riding an animal while under the influence of alcohol or drugs; to amend and reenact section 39-07-01 and subsection 1 of section 39-10.1-01 of the North Dakota Century Code, relating to a bicycle and a ridden animal being deemed a vehicle; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 39-07-01 of the North Dakota Century Code is amended and reenacted as follows:

**39-07-01. Bicycle or ridden animal to be deemed vehicle.**

For

1. Except as provided in subsection 2, for the purposes of chapters 39-08 through 39-13, a bicycle or a ridden animal must be deemed a vehicle.
2. For purposes of section 39-08-01, a bicycle or ridden animal may not be deemed a vehicle.

**SECTION 2. AMENDMENT.** Subsection 1 of section 39-10.1-01 of the North Dakota Century Code is amended and reenacted as follows:

1. It is unlawful for any person to do any act forbidden or fail to perform any act required in this chapter. AnyExcept as provided in section 3 of this Act, a person who violates any of the provisions of this chapter may be assessed a fee not to exceed five dollars.

**SECTION 3.** A new section to chapter 39-10.1 of the North Dakota Century Code is created and enacted as follows:

**Bicycling or riding an animal while under the influence of alcohol or drugs - Penalty.**

An individual operating a bicycle or riding an animal on a roadway, or an area the public has access to, may not be under the influence of alcohol or any drug to a degree which renders the individual a hazard to themselves or the general public. An individual who violates this section must be assessed a fee of two hundred dollars.

Approved April 7, 2023

Filed April 10, 2023

## CHAPTER 353

### HOUSE BILL NO. 1316

(Representatives Mock, Christy, Ista, Koppelman, Louser, D. Ruby, Wagner, Warrey)  
(Senators Conley, Meyer)

AN ACT to create and enact a new section to chapter 39-10.1 of the North Dakota Century Code, relating to multipassenger bicycles; to amend and reenact sections 39-01-01, 39-08-01, 39-08-18, and 39-10.1-08 of the North Dakota Century Code, relating to definitions relating to multipassenger bicycles, driving while under the influence of intoxicating liquor, open container prohibition, and exempting multipassenger bicycles from the point system; to provide a penalty; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 39-01-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **39-01-01. Definitions.**

In this title, unless the context or subject matter otherwise requires:

1. "Appropriate licensed addiction treatment program" means an addiction treatment program conducted by an addiction facility licensed by the department of health and human services or conducted by a licensed individual specifically trained in addiction treatment.
2. "Authorized emergency vehicles":
  - a. "Class A" authorized emergency vehicles means:
    - (1) Vehicles of a governmentally owned fire department.
    - (2) Vehicles when operated by or under the control of a police officer having authority to enforce the provisions of this title or by a salaried employee of a municipal police department within the municipality or by a sheriff or deputy sheriff not including special deputy sheriffs, or by the director of the department of corrections and rehabilitation and the director's authorized agents who have successfully completed training in the operation of class A authorized emergency vehicles.
    - (3) Vehicles clearly identifiable as property of the department of corrections and rehabilitation when operated or under the control of the director of the department of corrections and rehabilitation.
    - (4) Ambulances and other vehicles authorized by licensure granted under chapter 23-27.
    - (5) Vehicles operated by or under the control of the director, district deputy director, or a district deputy game warden of the game and fish department.

- (6) Vehicles owned or leased by the United States and used for law enforcement purposes.
  - (7) Vehicles designated for the use of the adjutant general or assistant adjutant general in cases of emergency.
  - (8) Vehicles operated by or under the control of the director of the parks and recreation department.
  - (9) Vehicles operated by or under the control of a licensed railroad police officer and used for law enforcement purposes.
  - (10) Vehicles operated by or under the control of the state forester.
  - (11) Vehicles operated by or under the control of the bureau of criminal investigation and used for law enforcement purposes.
  - (12) Vehicles operated by or under the department of health and human services in cases of emergencies.
  - (13) Vehicles used or operated by governmental search and rescue personnel while performing emergency operations or duties. As used in this paragraph, "search and rescue" means deployment, coordination, and use of available resources and personnel in locating, relieving the distress, and preserving the life of and removing an individual who is missing, trapped, or lost in the backcountry, remote areas, or waters of the state. The term includes water and dive rescue.
- b. "Class B" authorized emergency vehicles means wreckers and such other emergency vehicles as are authorized by the local authorities.
- c. "Class C" authorized emergency vehicles means:
- (1) Vehicles used by the state division of homeland security or local division of emergency management organizations.
  - (2) Vehicles used by volunteer firefighters while performing their assigned disaster and emergency responsibilities.
  - (3) Vehicles, other than ambulances, used by emergency medical services personnel.
  - (4) Vehicles used by volunteer search and rescue personnel if performing an emergency operation or duty upon the request of a state entity, political subdivision, or volunteer fire department. A volunteer organization may classify a personal vehicle as a class C emergency vehicle if needed to assist in a search and rescue operation in accordance with this paragraph. As used in this paragraph, "search and rescue" means deployment, coordination, and use of available resources and personnel in locating, relieving the distress, and preserving the life of and removing an individual who is missing, trapped, or lost in the backcountry, remote areas, or waters of the state. The term includes water and dive rescue.

3. "Bicycle" means every device propelled solely by human power upon which any person may ride, having two tandem wheels or two parallel wheels and one forward or rearward wheel. The term includes an electric bicycle and a multipassenger bicycle.
4. "Bus" means every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons, and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation. Provided, every motor vehicle designed for carrying not more than fifteen persons and used for a ridesharing arrangement, as defined in section 8-02-07, is not a "bus".
5. "Business district" means the territory contiguous to a highway when fifty percent or more of the frontage thereon for a distance of three hundred feet [91.44 meters] or more is occupied by buildings in use for business.
6. "Camping trailer" means a vehicular portable unit mounted on wheels and constructed with collapsible partial side walls that fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.
7. "Cancellation" means a license is annulled and terminated because of an error or defect or because the licensee is no longer entitled to the operator's license, but the cancellation of a license is without prejudice and application for a new license may be made at any time after the cancellation.
8. "Child restraint system" means a specifically designed device, built-in seating system, or belt-positioning booster that meets the federal motor vehicle safety standards and is permanently affixed to a motor vehicle, is affixed to the vehicle by a safety belt or universal attachment system, or is combined with a federally compliant safety belt system.
9. "Commercial freighting" means the carriage of things other than passengers, for hire, except that such term does not include:
  - a. The carriage of things other than passengers within the limits of the same city;
  - b. Carriage by local dray lines of baggage or goods to or from a railroad station from or to places in such city or in the immediate vicinity thereof, in this state, and not to exceed two miles [3.22 kilometers] from the corporate or recognized limits of said city; or
  - c. Hauling done by farmers for their neighbors in transporting agricultural products to or from market.
10. "Commercial passenger transportation" means the carriage of passengers for hire, except that the term does not include:
  - a. The carriage of passengers within the limits of a city.
  - b. The carriage by local buslines of passengers to or from a railroad station from or to places within any city or within two miles [3.22 kilometers] of the limits of the city.

- c. The carriage of passengers under a ridesharing arrangement, as defined in section 8-02-07.
11. "Commissioner" means the director of the department of transportation of this state, acting directly or through authorized agents as provided by section 24-02-01.3.
12. "Controlled-access highway" means every highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway.
13. "Conviction" means a final order or judgment or conviction by the North Dakota supreme court, any lower court having jurisdiction, a tribal court, or a court in another state if an appeal is not pending and the time for filing a notice of appeal has elapsed. Subject to the filing of an appeal, the term includes:
  - a. An imposed and suspended sentence;
  - b. A deferred imposition of sentence under subsection 4 of section 12.1-32-02; or
  - c. A forfeiture of bail or collateral deposited to secure a defendant's appearance in court and the forfeiture has not been vacated.
14. "Crosswalk" means that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs, or, in the absence of curbs, from the edges of the traversable roadway; or any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.
15. "Dealer" means every person, partnership, corporation, or limited liability company engaged in the business of buying, selling, or exchanging motor vehicles, or who advertises, or holds out to the public as engaged in the buying, selling, or exchanging of motor vehicles, or who engages in the buying of motor vehicles for resale. Any person, partnership, corporation, limited liability company, or association doing business in several cities or in several locations within a city must be considered a separate dealer in each such location.
16. "Department" means the department of transportation of this state as provided by section 24-02-01.1.
17. "Director" means the director of the department of transportation of this state as provided by section 24-02-01.3.
18. "Driver" means every person who drives or is in actual physical control of a vehicle.
19. "Electric bicycle" means a bicycle equipped with fully operable pedals, a saddle or seat for the rider, and an electric motor of seven hundred fifty or fewer watts which meets the requirements of one of the following three classes:

- a. A class 1 electric bicycle if the motor provides assistance only when the individual is pedaling and the motor ceases to provide assistance when a speed of twenty miles [32 kilometers] per hour is achieved.
  - b. A class 2 electric bicycle if the motor is capable of propelling the bicycle without the individual pedaling and the motor ceases to provide assistance when a speed of twenty miles [32 kilometers] per hour is achieved.
  - c. A class 3 electric bicycle if the motor provides assistance only when the individual is pedaling and the motor ceases to provide assistance when a speed of twenty-eight miles [45 kilometers] per hour is achieved.
20. "Electronic communication device" means an electronic device, including a wireless telephone, personal digital assistant, a portable or mobile computer or other device, and video display equipment. The term does not include a global positioning system or navigation system or a device that is physically or electronically integrated into the motor vehicle.
  21. "Essential parts" means all integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation and includes all integral parts and body parts, the removal, alteration, or substitution of which will tend to conceal the identity or substantially alter the appearance of the vehicle.
  22. "Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustible units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or by destroying life or limb.
  23. "Farm tractor" includes every motor vehicle designed and used primarily as a farm implement for drawing plows, moving machines, and other implements of husbandry.
  24. "Farm trailer" includes those trailers and semitrailers towed by a bona fide resident farmer hauling the farmer's own agricultural, horticultural, dairy, and other farm products if the gross weight, not including the towing vehicle, does not exceed twenty-four thousand pounds [10886.22 kilograms].
  25. "Fifth-wheel travel trailer" means a vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, of such size or weight as not to require a special highway movement permit and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.
  26. "Flammable liquid" means any liquid which has a flash point of seventy degrees Fahrenheit [21.11 degrees Celsius], or less, as determined by a tagliabue or equivalent closed-cup test device.

27. "Foreign vehicle" means every motor vehicle which is brought into this state other than in the ordinary course of business by or through a manufacturer or dealer and which has not been registered in this state.
28. "Gross weight" means the weight of a vehicle without load plus the weight of any load thereon.
29. "Guest" means and includes a person who accepts a ride in any vehicle without giving compensation therefor.
30. "Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel and of every way privately maintained within a mobile home park, trailer park, or campground containing five or more lots for occupancy by mobile homes, travel trailers, or tents when any part thereof is open for purposes of vehicular travel.
31. "House car" or "motor home" means a motor vehicle which has been reconstructed or manufactured primarily for private use as a temporary or recreational dwelling and having at least four of the following permanently installed systems:
  - a. Cooking facilities.
  - b. Icebox or mechanical refrigerator.
  - c. Potable water supply including plumbing and a sink with faucet either self-contained or with connections for an external source, or both.
  - d. Self-contained toilet or a toilet connected to a plumbing system with connection for external water disposal, or both.
  - e. Heating or air-conditioning system, or both, separate from the vehicle engine or the vehicle engine electrical system.
  - f. A 110-115 volt alternating current electrical system separate from the vehicle engine electrical system either with its own power supply or with a connection for an external source, or both, or a liquefied petroleum system and supply.
32. "Implement of husbandry" means every vehicle designed and adapted exclusively for agricultural, horticultural, or livestock raising operations or for lifting or carrying an implement of husbandry and in either case not subject to registration if used upon the highway.
33. "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict. Where a highway includes two roadways thirty feet [9.14 meters] or more apart, then every crossing of each roadway of such divided highway by an intersecting highway must be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet [9.14 meters] or more apart, then every

crossing of two roadways of such highways must be regarded as a separate intersection.

34. "Intoxicating liquor" means and includes any beverage containing alcohol.
35. "Judgment" means any judgment which has become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state of the United States, upon a claim for relief arising out of ownership, maintenance, or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a claim for relief on an agreement of settlement for such damages.
36. "Legal owner" means a person who holds the legal title to a vehicle.
37. "Licensed health care provider" means doctor of medicine, doctor of osteopathy, doctor of chiropractic, optometrist, psychologist, advanced practice registered nurse, or physician assistant who is licensed, certified, or registered in accordance with laws and regulations in this or another state.
38. "Lienholder" means a person holding a security interest in a vehicle.
39. "Local authorities" includes every county, municipal, and other local board or body having authority to adopt local police regulations under the constitution and laws of this state.
40. "Mail" means to deposit mail properly addressed and with postage prepaid with the United States postal service.
41. "Manifest injustice" means a specific finding by the court that the imposition of sentence is unreasonably harsh or shocking to the conscience of a reasonable person, with due consideration of the totality of circumstances.
42. "Manufactured home" means a structure, transportable in one or more sections, that, in the traveling mode, is eight body feet [2.44 meters] or more in width or forty body feet [12.19 meters] or more in length, or, when erected onsite, is three hundred twenty square feet [29.73 square meters] or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this subsection except the size requirements and with respect to whether the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under title 42 of the United States Code.
43. "Manufacturer" means any person who manufactures, assembles, or imports and sells new motor vehicles to new motor vehicle dealers for resale in the state; but such term does not include a person who assembles or specially builds interior equipment on a completed vehicle supplied by another manufacturer, distributor, or supplier.

44. "Metal tires" includes all tires the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material except that this provision does not apply to pneumatic tires.
45. "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.
46. "Modular unit" includes every factory fabricated transportable building unit designed to be incorporated with similar units at a building site into a modular structure to be used for residential, commercial, educational, or industrial purposes.
47. "Motor vehicle" includes every vehicle that is self-propelled, every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, and, for purposes of motor vehicle registration, title registration, and operator's licenses, motorized bicycles. The term does not include a snowmobile as defined in section 39-24-01 or, an electric bicycle, or a multipassenger bicycle.
48. "Motorcycle" means every 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 implements of husbandry. The term does not include an electric bicycle.
49. "Motorized bicycle" means a vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion or footrests for use by the operator, a power source providing up to a maximum of two brake horsepower having a maximum piston or rotor displacement of 3.05 cubic inches [49.98 milliliters] if a combustion engine is used, which will propel the vehicle, unassisted, at a speed not to exceed thirty miles [48.28 kilometers] per hour on a level road surface, and a power drive system that functions directly or automatically only, not requiring clutching or shifting by the operator after the drive system is engaged, and the vehicle may not have a width greater than thirty-two inches [81.28 centimeters]. The term does not include an electric bicycle.
50. "Motor-powered recreational vehicle" means a motorcycle, unconventional vehicle, or off-highway vehicle as defined in section 39-29-01, or a snowmobile as defined in section 39-24-01. The term does not include an electric bicycle.
51. "Multipassenger bicycle" means a vehicle that:
  - a. Has fully operative pedals for propulsion entirely by human power;
  - b. Has at least four wheels and is operated in a manner similar to a bicycle;
  - c. Has at least five seats for passengers;
  - d. Has been designed to be occupied by a driver and powered either by passengers providing pedal power to the drive train of the vehicle or by a motor capable of propelling the vehicle in the absence of human power;

- e. Is used for commercial purposes;
- f. Is operated by the owner of the vehicle or an employee of the owner of the vehicle;
- g. Is equipped with a steering wheel that gives the driver exclusive control of the direction of the vehicle;
- h. Is equipped with at least one taillamp in accordance with section 39-21-04;
- i. Is equipped with a stop lamp in accordance with subsection 1 of section 39-21-19; and
- j. Is equipped with headlamps in accordance with section 39-27-17.1.

51-52. "Nonresident" means any person who is not a resident of this state.

52-53. "Nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by such person of a motor vehicle, or the use of a vehicle owned by such person, in this state.

53-54. "Official traffic-control devices" means all signs, signals, markings, and devices not inconsistent with this title placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

54-55. "Operator" means every person who drives or is in actual physical control of a motor vehicle upon a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

55-56. "Operator's license", "driver's license", or "license to operate a motor vehicle" means any operator's or driver's license or any other license or permit to operate a motor vehicle issued under, or granted by, the laws of this state, including:

- a. Any temporary license or instruction permit;
- b. The privilege of any person to drive a motor vehicle whether such person holds a valid license; or
- c. Any nonresident's operating privilege as defined in this section.

56-57. "Owner" means a person, other than a lienholder, having the property in or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person, but excludes a lessee under a lease not intended as security.

57-58. "Park", when prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

58-59. "Passenger motor vehicle" means every motor vehicle designed principally for the transportation of persons and includes vehicles which utilize a truck chassis, but have a seating capacity for four or more passengers.

- 59-60. "Pedestrian" means any person afoot.
- 60-61. "Person" includes every natural person, firm, copartnership, association, corporation, or limited liability company.
- 61-62. "Pneumatic tires" includes all tires inflated with compressed air.
- 62-63. "Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.
- 63-64. "Police officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.
- 64-65. "Primary source identity document" means documentary evidence of an individual's name, date of birth, and legal presence required in chapters 39-06 and 39-06.2 related to the issuance of permits, licenses, and nondriver photo identification cards, and retained in the driver record.
- 65-66. "Private road or driveway" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.
- 66-67. "Proof of financial responsibility" means proof of ability to respond in damages for liability, on account of accidents occurring after the effective date of the proof, arising out of the ownership, maintenance, or use of a motor vehicle, in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, and, subject to the limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and in the amount of twenty-five thousand dollars because of injury to or destruction of property of others in any one accident.
- 67-68. "Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.
- 68-69. "Railroad sign or signal" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.
- 69-70. "Reconstructed vehicle" means any vehicle, of a type required to be registered, materially altered from its original construction by the removal, addition, or substitution of new or used essential parts.
- 70-71. "Recreational vehicle" means any motorcycle not qualified for registration, off-highway vehicle, snowmobile, vessel, or personal watercraft. The term does not include an electric bicycle.
- 71-72. "Residence district" means territory contiguous to a highway not comprising a business district, when the frontage on such highway for a distance of three hundred feet [91.44 meters] or more is occupied mainly by dwellings, or by dwellings and buildings in use for business.

- 72-73.** "Revocation" means that the operator's license is terminated and may not be renewed or restored, except on application for a new license presented to and acted upon by the director after the expiration of the period of revocation.
- 73-74.** "Right of way" means the privilege of the immediate use of a roadway.
- 74-75.** "Road tractor" means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.
- 75-76.** "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" as used herein refers to any such roadway separately but not to all such roadways collectively.
- 76-77.** "Saddle mount" means placing the front wheels of the drawn vehicle upon the bed of the drawing vehicle.
- 77-78.** "Safety zone" means the area or space officially set aside within a highway for the exclusive use of pedestrians and which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set aside as a safety zone.
- 78-79.** "Salvage certificate of title" means a document issued by the department for purposes of proof of ownership of a salvage or destroyed vehicle and not acceptable for motor vehicle registration purposes.
- 79-80.** "Schoolbus" means a motor vehicle designed or used to carry more than ten passengers in addition to the driver, and is used for the purpose of transporting preprimary, primary, or secondary school students from home to school, from school to home, or to and from school-related events. For the purposes of chapter 39-21, "schoolbus" means any motor vehicle that is owned or leased by a public or governmental agency and used to transport preprimary, primary, or secondary school students to or from school or to or from school-related events, or is privately owned and operated for compensation to transport preprimary, primary, or secondary school students to or from school or to or from school-related events. Schoolbus does not include a bus used as a common carrier.
- 80-81.** "Semitrailer" includes every vehicle of the trailer type so designed and used in conjunction with a truck or truck tractor that some part of its own weight and that of its own load rests upon or is carried by a truck or truck tractor, except that it does not include a "housetrailer" or "mobile home".
- 81-82.** "Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use of pedestrians.
- 82-83.** "Solid tire" includes every tire made of rubber or other resilient material other than a pneumatic tire.
- 83-84.** "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway.

- 84-86.** "Specially constructed vehicle" means any vehicle which was not constructed originally under the distinct name, make, model, or type by a generally recognized manufacturer of vehicles.
- 85-86.** "Stand" or "standing" means the halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.
- 86-87.** "State" means a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a province of the Dominion of Canada.
- 87-88.** "Stop", when required, means complete cessation from movement.
- 88-89.** "Stop" or "stopping", when prohibited, means any halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal.
- 89-90.** "Street" means the entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.
- 90-91.** "Superintendent" means the superintendent of the North Dakota state highway patrol, acting directly or through authorized employees of the superintendent.
- 91-92.** "Suspension" means that the operator's license is temporarily withdrawn but only during the period of the suspension.
- 92-93.** "Through highway" means every highway or portion thereof on which vehicular traffic is given preferential right of way, and at the entrances to which vehicular traffic from intersecting highways is required by law to yield right of way to vehicles on such through highway and in obedience to either a stop sign or yield sign, when such signs are erected by law.
- 93-94.** "Trackless trolley coach" means every motor vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.
- 94-95.** "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highway for purposes of travel.
- 95-96.** "Traffic-control signal" means any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.
- 96-97.** "Trailer" includes every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle, except that it does not include a "housetrailer" or "mobile home", which terms mean a vehicle as defined in this subsection which is designed and intended for use as living or sleeping quarters for people and which is not used for commercial hauling of passengers.

- 97-98. "Travel trailer" means a vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of such size or weight as not to require a special highway movement permit when towed by a motorized vehicle.
- 98-99. "Truck" includes every motor vehicle designed, used, or maintained primarily for transportation of property.
- 99-100. "Truck camper" means a portable unit that is constructed to provide temporary living quarters for recreational, camping, or travel use; consists of a roof, floor, and sides; and is designed to be loaded onto and unloaded from the bed of a pickup truck.
- 400-101. "Truck tractor" includes every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.
- 404-102. "Urban district" means the territory contiguous to and including any street which is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than one hundred feet [30.48 meters] for a distance of a quarter of a mile [402.34 meters] or more.
- 402-103. "Used vehicle" means a motor vehicle which has been sold, bargained, exchanged, given away, or the title to which has been transferred to another, by the person who first acquired it from the manufacturer or importer, dealer, or agent of the manufacturer or importer.
- 403-104. "Vehicle" includes every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks. The term does not include an electric bicycle.

**SECTION 2. AMENDMENT.** Section 39-08-01 of the North Dakota Century Code is amended and reenacted as follows:

**39-08-01. Persons under the influence of intoxicating liquor or any other drugs or substances not to operate vehicle - Penalty.**

1. a. A person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if any of the following apply:
  - a. (1) That person has an alcohol concentration of at least eight 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.
  - b. (2) That person is under the influence of intoxicating liquor.
  - c. (3) That person is under the influence of any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely driving.
  - d. (4) That person is under the combined influence of alcohol and any other drugs or substances to a degree which renders that person incapable of safely driving.

e. (5) That individual refuses to submit to any of the following:

- (1) (a) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under section 39-06.2-10.2 if the individual is driving or is in actual physical control of a commercial motor vehicle; or
- (2) (b) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under section 39-20-01.

f. ~~Subdivision e~~

~~(6) Paragraph 5 does not apply to an individual unless the individual has been advised of the consequences of refusing a chemical test consistent with the Constitution of the United States and the Constitution of North Dakota.~~

~~b. The fact any person charged with violating this section is or has been legally entitled to use alcohol or other drugs or substances is not a defense against any charge for violating this section. It is an affirmative defense that a drug was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person. If the individual violated subdivisions a, b, c, or d of this subsection and subdivision e of this subsection paragraph 1, 2, 3, or 4 of subdivision a of this subsection and paragraph 5 of subdivision a of this subsection and the violations arose from the same incident, for purposes of suspension or revocation of an operator's license, the violations are deemed a single violation and the court shall forward to the department of transportation only the conviction for driving under the influence or actual physical control.~~

~~c. The driver of a multipassenger bicycle is subject to a violation of this section but a multipassenger bicycle passenger may not be charged with a violation of this section.~~

2. An individual who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state who refuses to submit to a chemical test, or tests, required under section 39-06.2-10.2 or 39-20-01, is guilty of an offense under this section.
3. An individual violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a seven-year period, of a class A misdemeanor for a third offense in a seven-year period, and of a class C felony for any fourth or subsequent offense within a fifteen-year period. The minimum penalty for violating this section is as provided in subsection 5. 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.
4. Upon conviction of a second or subsequent offense within seven years under this section or equivalent ordinance, the court may order the motor vehicle

number plates of all of the motor vehicles owned and operated by the offender at the time of the offense to be destroyed by the office of the police officer that made the arrest. The offender shall deliver the number plates to the court without delay at a time certain as ordered by the court following the conviction. The court shall deliver the number plates to the office and notify the department of the order. An offender who does not provide the number plates to the court at the appropriate time is subject to revocation of probation. The court may make an exception to this subsection, on an individual basis, to avoid undue hardship to an individual who is completely dependent on the motor vehicle for the necessities of life, including a family member of the convicted individual and a co-owner of the motor vehicle, or if the offender is participating in the twenty-four seven sobriety program.

5. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection.
  - a.
    - (1) For a first offense, the sentence must include both a fine of at least five hundred dollars and an order for addiction evaluation by an appropriate licensed addiction treatment program.
    - (2) In addition, for a first offense when the convicted person has an alcohol concentration of at least sixteen one-hundredths of one percent by weight, the offense is an aggravated first offense and the sentence must include a fine of at least seven hundred fifty dollars and at least two days' imprisonment.
  - b. For a second offense within seven years, the sentence must include at least ten days' imprisonment, of which forty-eight hours must be served consecutively; a fine of one thousand five hundred dollars; an order for addiction evaluation by an appropriate licensed addiction treatment program; and at least three hundred sixty days' participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.
  - c. For a third offense within seven years, the sentence must include at least one hundred twenty days' imprisonment; a fine of at least two thousand dollars; an order for addiction evaluation by an appropriate licensed addiction treatment program; at least three hundred sixty days' supervised probation; and at least three hundred sixty days' participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.
  - d. For a fourth or subsequent offense within fifteen years, the sentence must include at least one year and one day's imprisonment; a fine of at least two thousand dollars; an order for addiction evaluation by an appropriate licensed treatment program; at least two years' supervised probation; and participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.
  - e. The imposition of sentence under this section may not be deferred under subsection 4 of section 12.1-32-02 for an offense subject to this section.
  - f. If the offense is subject to subdivision a or b, a municipal court or district court may not suspend a sentence, but may convert each day of a term of imprisonment to ten hours of community service for an offense subject to

paragraph 2 of subdivision a. If the offense is subject to subdivision c, the district court may suspend a sentence, except for sixty days' imprisonment, under subsection 3 of section 12.1-32-02 on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation. If the offense is subject to subdivision d, the district court may suspend a sentence, except for one year's imprisonment, under subsection 3 of section 12.1-32-02 on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation. If the defendant is found to be in need of alcohol and substance abuse treatment and rehabilitation, the district court may order the defendant placed under the supervision and management of the department of corrections and rehabilitation and is subject to the conditions of probation under section 12.1-32-07. The district court may require the defendant to complete alcohol and substance abuse treatment and rehabilitation under the direction of the drug court program as a condition of probation in accordance with rules adopted by the supreme court. The district court may terminate probation under this section when the defendant completes the drug treatment program. If the district court finds that a defendant has failed to undergo an evaluation or complete treatment or has violated any condition of probation, the district court shall revoke the defendant's probation and shall sentence the defendant in accordance with this subsection.

- g. For purposes of this section, conviction of an offense under a law or ordinance of another state which is equivalent to this section must be considered a prior offense if such offense was committed within the time limitations specified in this section.
- h. If the penalty mandated by this section includes imprisonment or placement upon conviction of a violation of this section or equivalent ordinance, and if an addiction evaluation has indicated that the defendant needs treatment, the court may order the defendant to undergo treatment at an appropriate licensed addiction treatment program under subdivision g of subsection 1 of section 12.1-32-02 and the time spent by the defendant in the treatment must be credited as a portion of a sentence of imprisonment or placement under this section. A court may not order the department of corrections and rehabilitation to be responsible for the costs of treatment in a private treatment facility.
- i. If the court sentences an individual to the legal and physical custody of the department of corrections and rehabilitation, the department may place the individual in an alcohol treatment program designated by the department. Upon the individual's successful completion of the alcohol treatment program, the department shall release the individual from imprisonment to begin the court-ordered period of probation. If there is not any court-ordered period of probation, the court may order the individual to serve the remainder of the sentence of imprisonment on supervised probation and the terms and conditions must include participation in the twenty-four seven sobriety program and any terms and conditions of probation previously imposed by the court. Probation under this subsection may include placement in another facility or treatment program. If an individual is placed in another facility or treatment program after release from imprisonment, the remainder of the individual's sentence of imprisonment must be considered time spent in custody. Individuals

incarcerated under this section subsequent to a second probation revocation are not eligible for release from imprisonment upon the successful completion of treatment.

- j. If the individual has participated in the twenty-four seven sobriety program as a condition of pretrial release or for the purpose of receiving a temporary restricted operator's license under section 39-06.1-11, the sentencing court may give credit for the time the individual has already served on the twenty-four seven sobriety program when determining the amount of time the individual must serve on the twenty-four seven sobriety program for the purposes of probation, if that individual has not violated the twenty-four seven sobriety program before sentencing.
6. As used in subdivisions b and c of subsection 5, the term "imprisonment" includes house arrest. As a condition of house arrest, a defendant may not consume alcoholic beverages. The house arrest must include a program of electronic home detention and the defendant shall participate in the twenty-four seven sobriety program. The defendant shall defray all costs associated with the electronic home detention. For an offense under subdivision b or c of subsection 5, no more than ninety percent of the sentence may be house arrest.
7. As used in this title, participation in the twenty-four seven sobriety program under chapter 54-12 means compliance with sections 54-12-27 through 54-12-31, and requires sobriety breath testing twice per day seven days per week or electronic alcohol monitoring, urine testing, or drug patch testing. The offender is responsible for all twenty-four seven sobriety program fees and the court may not waive the fees. For purposes of this section, the twenty-four seven sobriety program is a condition of probation and a court may not order participation in the program as part of the sentence. If an individual ordered to participate in the twenty-four seven program is not a resident of this state, that individual shall enroll in a twenty-four seven program or an alcohol compliance program if available in that individual's state of residence and shall file proof of such enrollment.

**SECTION 3. AMENDMENT.** Section 39-08-18 of the North Dakota Century Code is amended and reenacted as follows:

**39-08-18. Open container law - Penalty.**

1. A person may not drink or consume alcoholic beverages, as defined in section 5-01-01, in or on any motor vehicle when the vehicle is upon a public highway or in an area used principally for public parking. A person may not have in that person's possession on that person's person while in or on a private motor vehicle upon a public highway or in an area used principally for public parking, any bottle or receptacle containing alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed. It is unlawful for the owner of any private motor vehicle or the driver, if the owner be not then present in or on the motor vehicle, to keep or allow to be kept in a motor vehicle when such vehicle is upon the public highway or in an area used principally for public parking any bottle or receptacle containing such alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed except when such bottle or receptacle is kept in the trunk of the motor vehicle when such vehicle is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with

a trunk. A utility compartment or glove compartment must be deemed to be within the area occupied by the driver and passengers. This subsection does not prohibit the consumption or possession of alcoholic beverages in a house car if the consumption or possession occurs in the area of the house car used as sleeping or living quarters and that area is separated from the driving compartment by a solid partition, door, curtain, or some similar means of separation; however, consumption is not authorized while the house car is in motion. Any person violating this subsection must be assessed a fee of fifty dollars; however, the licensing authority may not record the violation against the person's driving record unless the person was the driver of the motor vehicle at the time that the violation occurred.

2. Subsection 1 does not apply to a public conveyance that has been commercially chartered for group use, any passenger for compensation in a for-hire motor vehicle, or a privately owned motor vehicle operated by a person in the course of that person's usual employment transporting passengers at the employer's direction. This subsection does not authorize possession or consumption of an alcoholic beverage by the operator of any motor vehicle described in this subsection while upon a public highway or in an area used principally for public parking.
3. The driver of a multipassenger bicycle may not:
  - a. Drink or consume alcoholic beverages, as defined in section 5-01-01, while operating the multipassenger bicycle on any public street, road, path, or highway or while in an area used principally for parking; or
  - b. Have in the driver's possession on the driver's person while operating the multipassenger bicycle on a public street, road, path, or highway or while in an area used principally for parking, any bottle or receptacle containing any alcoholic beverage which has been opened, or the seal broken, or the contents of which have been partially removed.

**SECTION 4. AMENDMENT.** Section 39-10.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**39-10.1-08. Point system not applicable.**

Any violation of this chapter, or any moving violation as defined in section 39-06.1-09, or any nonmoving violation as defined in section 39-06.1-08 when committed on a bicycle or an electric bicycle, or a multipassenger bicycle, as defined in section 39-01-01, is not cause for the licensing authority to assess points against the driving record of the violator pursuant to section 39-06.1-10. Any other legally authorized penalty for a criminal traffic offense or noncriminal traffic violation is applicable to bicyclists.

**SECTION 5.** A new section to chapter 39-10.1 of the North Dakota Century Code is created and enacted as follows:

**Multipassenger bicycles.**

Unless otherwise allowed by a governmental entity having jurisdiction, a multipassenger bicycle may not be operated on any bicycle path or multi-use path.

**SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 6, 2023

Filed April 10, 2023

## CHAPTER 354

### HOUSE BILL NO. 1277

(Representatives Satrom, Karls, Klemin, Roers Jones, Schneider)  
(Senator Larson)

AN ACT to amend and reenact section 39-08-01.5 of the North Dakota Century Code, relating to suspension of the electronic alcohol monitoring and sobriety breath testing requirement during drug court program participation; and to declare an emergency.

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

<sup>203</sup> **SECTION 1. AMENDMENT.** Section 39-08-01.5 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-08-01.5. Partial suspension of sentence for drug court program or veterans treatment docket completion.**

1. Notwithstanding section 39-08-01, ~~all~~:
  - a. All but ten days of the minimum mandatory sentence required for a defendant charged with a third or subsequent violation of section 39-08-01 may be suspended on the condition the defendant successfully completes a drug court program or veterans treatment docket approved by the supreme court.
  - b. If the drug court determines a defendant participating in a drug court program has substantially complied with the requirements of the drug court program, the drug court may suspend the defendant's electronic alcohol monitoring and sobriety breath testing requirement under the twenty-four seven sobriety program for the six months preceding completion of the drug court program.
2. Upon successful completion of a drug court program or veterans treatment docket, a defendant convicted of a felony under section 39-08-01 and sentenced to drug court or veterans treatment docket is deemed to have been convicted of a misdemeanor.
3. If a defendant convicted of a misdemeanor under section 39-08-01 is sentenced to drug court or veterans treatment docket and successfully completes a drug court program or veterans treatment docket, the court shall dismiss the case and seal the file in accordance with section 12.1-32-07.2.

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

Approved April 12, 2023

Filed April 13, 2023

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<sup>203</sup> Section 39-08-01.5 was also amended by section 3 of House Bill No. 1138, chapter 132.

## CHAPTER 355

### HOUSE BILL NO. 1246

(Representatives Grueneich, Brandenburg, Ostlie, Satrom, Vigesaa)  
(Senator Erbele)

AN ACT to amend and reenact section 39-10-04 of the North Dakota Century Code, relating to required traffic-control devices.

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

**SECTION 1. AMENDMENT.** Section 39-10-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-10-04. Obedience to and required traffic-control devices.**

1. The driver of ~~any~~ a vehicle shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with the provisions of this chapter, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter.
2. ~~No~~ A provision of this chapter for which traffic-control devices are required may ~~not~~ be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a state statute does not state that devices are required, ~~such~~ the statute is effective even though no devices are erected or in place.
3. Whenever ~~an~~ official traffic-control devices ~~are~~ device is placed in ~~positions~~ a position approximately conforming to the requirements of this title, ~~such devices~~ the device must be presumed to have been so placed by the official act or direction of lawful authority, unless the contrary is established by competent evidence.
4. Any official traffic-control device placed pursuant to the provisions of this title and purporting to conform to the lawful requirements pertaining to ~~such devices~~ the device must be presumed to comply with the requirements of this title, unless the contrary is established by competent evidence.
5. The department may not remove or inactivate a traffic-control signal placed within the corporate limits of a city and within one thousand feet [304.8 meters] of a public or nonpublic elementary, middle, or high school without consulting with the city having jurisdiction of the location where the traffic-control signal is placed, except for temporary repair or routine maintenance.

Approved March 29, 2023

Filed March 30, 2023

## CHAPTER 356

### SENATE BILL NO. 2189

(Senators Weber, Dever, Rummel)  
(Representatives Grueneich, Mitskog, Swiontek)

AN ACT to amend and reenact section 39-10-21.1 of the North Dakota Century Code, relating to entering a closed road; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 39-10-21.1 of the North Dakota Century Code is amended and reenacted as follows:

**39-10-21.1. Closing road because of hazardous conditions - ~~Posting of official traffic-control devices~~ Road closure notice - Entering closed road prohibited.**

1. The highway patrol or local law enforcement authorities having jurisdiction over a road may close a road temporarily due to hazardous conditions for the protection and safety of the public. If such a closing is made, the authority ordering the closing shall make every reasonable attempt to notify the public and, when practical, may post appropriate official traffic-control devices to advise motorists of the closing.
2. ~~Any~~ If a road closure under subsection 1 has been announced to the public, an individual, while operating a motor vehicle, may not knowingly enter a road closed which is posted with an appropriate traffic-control device at the point of entry ~~may not drive on the road.~~

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 357

### HOUSE BILL NO. 1141

(Representatives Schauer, Klemin, O'Brien, Pyle, Schneider, Wagner)  
(Senators Kreun, Lee, Mathern, K. Roers)

AN ACT to create and enact section 39-10-26.3 of the North Dakota Century Code, relating to yielding the right of way for a stationary motor vehicle; and to provide a penalty.

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

**SECTION 1.** Section 39-10-26.3 of the North Dakota Century Code is created and enacted as follows:

#### **39-10-26.3. Vehicle to yield the right of way for stationary motor vehicles.**

1. If a motor vehicle is stopped, standing, or parked along the interstate system, or a multilane highway outside the limits of a city, with flashing hazard warning signals, the driver of an approaching or passing vehicle shall proceed with caution and yield the right of way by moving to a lane not adjacent to the stationary motor 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.
2. This section does not relieve the driver of a stationary motor vehicle from the stopping requirements and restrictions provided under section 39-10-47 or from the lamp restrictions provided under section 39-21-26.

Approved April 6, 2023

Filed April 10, 2023

## CHAPTER 358

### HOUSE BILL NO. 1181

(Representatives VanWinkle, Christensen, Frelich, Hauck, Mock, Murphy, D. Ruby,  
Weisz)  
(Senators Boehm, Estenson, Larson, Luick)

AN ACT to amend and reenact subsection 5 of section 39-12-02 of the North Dakota Century Code, relating to special permits for vehicles of excessive size; and to provide a penalty.

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

<sup>204</sup> **SECTION 1. AMENDMENT.** Subsection 5 of section 39-12-02 of the North Dakota Century Code is amended and reenacted as follows:

5. Permits issued for overdimensional movements of vehicles not exceeding ~~twelve~~ feet [~~3.053.66~~ meters] in total width, including load, are valid for travel during the day and night with proper lighting. Permits issued for overdimensional movements of vehicles not exceeding one hundred twenty feet [36.58 meters] in total length, including load, are valid for travel during the day and night with proper lighting.

Approved March 29, 2023

Filed March 30, 2023

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<sup>204</sup> Section 39-12-02 was also amended by section 2 of House Bill No. 1060, chapter 359.

## CHAPTER 359

### HOUSE BILL NO. 1060

(Political Subdivisions Committee)  
(At the request of the Highway Patrol)

AN ACT to amend and reenact section 24-18-06, subsection 3 of section 39-12-02, and subsection 6 of section 39-12-05.3 of the of the North Dakota Century Code, relating to special permit fees.

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

**SECTION 1. AMENDMENT.** Section 24-18-06 of the North Dakota Century Code is amended and reenacted as follows:

##### **24-18-06. Preservation of existing truck weight provisions.**

This chapter does not modify or authorize any change to the existing weight limitations for trucks with gross vehicle weight up to one hundred five thousand five hundred pounds [47854 kilograms] excluding the interstate system.

<sup>205</sup> **SECTION 2. 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 a 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. Permit fees generated by a political subdivision must be deposited in the local authority's general fund for support of the local road system. 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 an interstate permit is ten dollars per trip, fifty dollars per month for fees paid on a monthly basis, or three hundred dollars per ~~twelve-month period~~ for unlimited trips in an annual period. Annual permits may be purchased for the period beginning January first and ending December thirty-first or for a twelve-month period beginning the date of purchase.
  - c. The fee for special mobile equipment is twenty-five dollars per trip.

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<sup>205</sup> Section 39-12-02 was also amended by section 1 of House Bill No. 1181, chapter 358.

- 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, fifty dollars per month for fees paid on a monthly basis, or one hundred fifty dollars per for unlimited trips in an annual period. Annual permits may be purchased for the period beginning January first and ending December thirty-first, or for a twelve-month period beginning the date of purchase.
- 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, fifty dollars per month for fees paid on a monthly basis, or one hundred fifty dollars per for unlimited trips in an annual period. Annual permits may be purchased for the period beginning January first and ending December thirty-first or for a twelve-month period unless the beginning the date of purchase. The fee for a vehicle that is a noncommercial fishhouse trailer being moved by the owner, then the fee is twenty dollars per twelve-month period.
- j. The fee for an overlength vehicle or load that is one hundred twenty feet [36.58 meters] or less is twenty dollars per trip, fifty dollars per month for fees paid on a monthly basis, or one hundred fifty dollars per for unlimited trips in an annual period. Annual permits may be purchased for the period beginning January first and ending December thirty-first, or for a twelve-month period beginning the date of purchase.
- k. The highway patrol may establish an online electronic permit system. If the highway patrol establishes an online electronic permit system, the highway patrol shall assess an additional fee of up to fifteen dollars for every permit issued under this section to be deposited into the motor carrier electronic permit transaction fund.

**SECTION 3. AMENDMENT.** Subsection 6 of section 39-12-05.3 of the North Dakota Century Code is amended and reenacted as follows:

6. The director may issue a permit for a truck with a gross weight that exceeds one hundred five thousand five hundred pounds [47854 kilograms], not to exceed one hundred twenty nine thousand pounds [58513.41 kilograms]. The monthly permit fee is one hundred dollars per month or seven hundred dollars annually. Annual permits may be purchased for the period beginning January first and ending December thirty-first or for a twelve-month period beginning the date of purchase. Vehicle weight under this subsection is determined according to the formula under subsection 2 of section 39-12-05.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 360

### SENATE BILL NO. 2120

(Transportation Committee)  
(At the request of the Highway Patrol)

AN ACT to amend and reenact sections 39-12-11, 39-12-17, and 39-12-22, relating to overweight vehicle limitations; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 39-12-11 of the North Dakota Century Code is amended and reenacted as follows:

##### **39-12-11. Impounding overweight vehicle.**

Any vehicle found to have been moved or used upon any highway, street, or road in this state at a weight exceeding the limitations as specified in any order, ordinance, or resolution issued under section 39-12-03, exceeding the limitations imposed by 39-12-05.3, or as limited by section 39-12-05 may be impounded by any peace officer and taken to a warehouse or garage for storage.

**SECTION 2. AMENDMENT.** Section 39-12-17 of the North Dakota Century Code is amended and reenacted as follows:

##### **39-12-17. Trial - Charges.**

At the trial of the action, the court shall hear testimony concerning the facts and if it is found that such vehicle or vehicles were moved upon the highways, streets, or roads of this state at a weight in excess of the limitations imposed under the provisions of section 39-12-03 or 39-12-05.3, or as limited by the provisions of section 39-12-05, charges for the extraordinary use of the highways, streets, or roads must be assessed as follows:

1. The storage charges and costs of the action must be assessed; and
2. An additional charge must be assessed as follows:

1 to 1,000 pounds [.45 to 453.59 kilograms] of excess weight = \$20

1,001 to 2,000 pounds [454.05 to 907.18 kilograms] of excess weight = \$40

2,001 to 3,000 pounds [907.64 to 1360.78 kilograms] of excess weight = \$60

3,001 to 4,000 pounds [1361.23 to 1814.37 kilograms] of excess weight = \$140

4,001 to 5,000 pounds [1814.82 to 2267.96 kilograms] of excess weight = \$220

5,001 to 6,000 pounds [2268.41 to 2721.55 kilograms] of excess weight = \$305

6,001 to 7,000 pounds [2722.01 to 3175.14 kilograms] of excess weight = \$380

7,001 to 8,000 pounds [3175.60 to 3628.74 kilograms] of excess weight = \$495

8,001 to 9,000 pounds [3629.19 to 4082.33 kilograms] of excess weight = \$575

9,001 to 10,000 pounds [4082.78 to 4535.92 kilograms] of excess weight = \$655

10,001 to 11,000 pounds [4536.37 to 4989.51 kilograms] of excess weight = \$1,100

11,001 to 12,000 pounds [4989.97 to 5443.10 kilograms] of excess weight = \$1,200

12,001 to 13,000 pounds [5443.56 to 5896.70 kilograms] of excess weight = \$1,300

13,001 to 14,000 pounds [5897.15 to 6350.29 kilograms] of excess weight = \$1,680

14,001 to 15,000 pounds [6350.74 to 6803.88 kilograms] of excess weight = \$1,800

15,001 to 16,000 pounds [6804.33 to 7257.47 kilograms] of excess weight = \$1,920

16,001 to 17,000 pounds [7257.93 to 7711.06 kilograms] of excess weight = \$2,550

17,001 to 18,000 pounds [7711.52 to 8164.66 kilograms] of excess weight = \$2,700

18,001 to 19,000 pounds [8165.11 to 8618.25 kilograms] of excess weight = \$2,850

19,001 to 20,000 pounds [8618.70 to 9071.84 kilograms] of excess weight = \$3,000

20,001 to 21,000 pounds [9072.29 to 9525.43 kilograms] of excess weight = \$4,200

21,001 to 22,000 pounds [9525.89 to 9979.02 kilograms] of excess weight = \$4,400

22,001 to 23,000 pounds [9979.48 to 10432.62 kilograms] of excess weight = \$4,600

23,001 to 24,000 pounds [10433.07 to 10886.21 kilograms] of excess weight = \$4,800

24,001 to 25,000 pounds [10886.66 to 11339.80 kilograms] of excess weight = \$5,000

25,001 to 26,000 pounds [11340.25 to 11793.40 kilograms] of excess weight = \$5,200

26,001 to 27,000 pounds [11793.86 to 12246.99 kilograms] of excess weight = \$5,400

27,001 to 28,000 pounds [12247.45 to 12700.59 kilograms] of excess weight = \$5,600

28,001 to 29,000 pounds [12701.04 to 13154.18 kilograms] of excess weight = \$5,800

29,001 to 30,000 pounds [13154.63 to 13607.77 kilograms] of excess weight = \$6,000

An additional charge of \$200 for every 1,000-pound [453.59-kilogram] increase over 30,000 pounds [13607.77 kilograms] consistent with the above formula.

**SECTION 3. AMENDMENT.** Section 39-12-22 of the North Dakota Century Code is amended and reenacted as follows:

**39-12-22. Permissible loads - Exceptions.**

When any motor truck, truck tractor, or trailer is operated upon the public highways of this state carrying a load in excess of the maximum prescribed under the provisions of sections 39-12-03 and, 39-12-05, and 39-12-05.3 or other maximum weight limitations prescribed by law, the load must be reduced or shifted to within such maximum limitations before being permitted to operate on any public highway of this state; provided, however, that any such vehicle carrying a load of livestock is exempt from the limitations prescribed in section 39-12-05.3, relating to the carrying capacity of any wheel, tire, axle, or group of axles when excessive weight is caused by a shifting of the weight of the livestock. All material unloaded as required by this section must be cared for by the owner or operator of such vehicle at the risk of such owner or operator.

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

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 361

### HOUSE BILL NO. 1338

(Representatives Porter, Dockter, Heinert, Karls)  
(Senators Dever, Larson)

AN ACT to amend and reenact section 31-13-04 and subsection 10 of section 39-20-07 of the North Dakota Century Code, relating to collection of samples for DNA testing and chemical tests to determine alcohol concentration and presence of drugs for individuals operating motor vehicles; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 31-13-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **31-13-04. DNA testing - Procedure - Immunity.**

1. Samples of blood or other body fluids for DNA testing may ~~only~~ be obtained in a medically approved manner by a physician, registered nurse, licensed practical nurse, phlebotomist, or medical technologist, or by other qualified personnel approved by the laboratory, and packaged and submitted in kits approved or provided by the laboratory and in accordance with rules adopted by the laboratory. ~~No civil~~
2. Samples of saliva for DNA testing may be obtained by a licensed peace officer, and packaged and submitted in kits approved or provided by the laboratory and in accordance with rules adopted by the laboratory. Samples may be collected and submitted by personnel from an agency outside the state with approval of the laboratory.
3. Civil or criminal liability may not attach to any individual authorized to draw or obtain a sample of blood or other body fluids from any individual for DNA testing, ~~provided if~~ the sample of blood or other body fluids was drawn or obtained according to sampling techniques approved by the laboratory.

**SECTION 2. AMENDMENT.** Subsection 10 of section 39-20-07 of the North Dakota Century Code is amended and reenacted as follows:

10. A law enforcement officer who has witnessed an individual who is medically qualified to draw the blood sample for testing may sign a verified statement that the law enforcement officer witnessed the individual draw the blood sample and the individual followed the approved methods of the ~~state toxicologist~~ director of the state crime laboratory or the director's designee. Further foundation is not required to establish that the blood sample was drawn according to the approved method of the ~~state toxicologist~~ director of the state crime laboratory or the director's designee.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 29, 2023

Filed March 30, 2023

## CHAPTER 362

### SENATE BILL NO. 2362

(Senators Rummel, Hogue, Lee)  
(Representatives Klemin, Lefor)

AN ACT to amend and reenact section 39-21-41.4 of the North Dakota Century Code, relating to safety belt usage; to repeal section 39-21-41.5 of the North Dakota Century Code, relating to secondary enforcement of safety belt requirements; and to provide a penalty.

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

<sup>206</sup> **SECTION 1. AMENDMENT.** Section 39-21-41.4 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-21-41.4. Use of safety belts required in certain motor vehicles - Enforcement - Evidence.**

~~Subject to the limitations of this section and section 39-21-41.5, a~~ driver may not operate upon a highway a motor vehicle designed for carrying fewer than eleven passengers, which was originally manufactured with safety belts unless each ~~front~~ seat occupant is wearing a properly adjusted and fastened safety belt. This section does not apply to a child in a child restraint or safety belt in accordance with section 39-21-41.2; to drivers of implements of husbandry; to operators of farm vehicles as defined in subsection 5 of section 39-04-19; to rural mail carriers while on duty delivering mail; to an occupant with a medical or physically disabling condition that prevents appropriate restraint in a safety belt, if a qualified physician, physician assistant, or advanced practice registered nurse states in a signed writing the nature of the condition and the reason restraint is inappropriate; or when all ~~front~~ seat safety belts are in use by other occupants. A physician, physician assistant, or advanced practice registered nurse who, in good faith, provides a statement that restraint would be inappropriate is not subject to civil liability. A violation for not wearing a safety belt under this section is not, in itself, evidence of negligence. The fact of a violation of this section is not admissible in any proceeding other than one charging the violation.

**SECTION 2. REPEAL.** Section 39-21-41.5 of the North Dakota Century Code is repealed.

Approved April 4, 2023

Filed April 5, 2023

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<sup>206</sup> Section 39-21-41.4 was also amended by section 2 of Senate Bill No. 2085, chapter 252.

## CHAPTER 363

### SENATE BILL NO. 2193

(Senators Paulson, K. Roers, Wanzek)  
(Representatives Nathe, Steiner, Weisz)

AN ACT to amend and reenact section 39-22-14 of the North Dakota Century Code, relating to motor vehicle dealer licenses; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 39-22-14 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-22-14. Motor vehicle dealer license - Fees - Penalty.**

1. A person may not engage in the business of buying, selling, or exchanging of motor vehicles without possessing a current motor vehicle dealer license. A person may not advertise or otherwise hold out to the public as engaging in the buying, selling, or exchanging of motor vehicles for resale without possession of a current new motor vehicle dealer license or used motor vehicle dealer license.
2. The motor vehicle dealer license fee is one hundred dollars per year and for which the department shall issue one dealer plate. The applicant for an initial new or used motor vehicle dealer license shall submit with the application a nonrefundable fee of one hundred dollars for the initial inspection ~~with the application~~. The applicant shall provide the business's federal employer identification number or, in the case of an application from an individual, the individual's social security number.
3. A motor vehicle dealer licensed under this chapter may buy, sell, or exchange:
  - a. A motor-powered recreational vehicle if the dealer maintains a surety bond that fulfills the requirements of section 39-22.3-05 and collects and timely transmits any applicable snowmobile safety and off-highway safety fees; and
  - b. A trailer if the dealer maintains a surety bond that fulfills the requirements of section 39-22.1-02.
4. A vehicle sold under subsection 3 does not count toward the minimum sales requirement under section 39-22-18.
5. The department may assess a person violating this section a one hundred dollar fee for a first violation, a two hundred dollar fee for a second violation within two years of the first violation, or a fee of at least five hundred dollars but not more than two thousand dollars for a third or subsequent violation within five years of the first violation. Any person not licensed as a dealer under this section who has been previously found to be in violation of this section, and assessed the fees specified, is guilty of a class B misdemeanor if a third or subsequent violation occurs.

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 364

### HOUSE BILL NO. 1346

(Representatives Murphy, Dyk, Mock, Nathe, Nelson, J. Olson, M. Ruby)

AN ACT to amend and reenact subsection 3 of section 39-24-04 and section 39-24-11 of the North Dakota Century Code, relating to snowmobile registration exemption and penalties; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 39-24-04 of the North Dakota Century Code is amended and reenacted as follows:

3. If a snowmobile is exempt from registration under subdivision b or c of subsection 2, the owner is required to purchase an out-of-state public trails and lands access permit received upon payment of a twenty-five dollar per year fee.
  - a. The permit must be in the operator's possession displayed on the snowmobile when that individual the snowmobile is operating the snowmobile within operated on public lands within the state.
  - b. For up to five business days after purchasing an out-of-state public trails and lands access permit, an online receipt or printed receipt may be presented in lieu of the official permit until the official permit is received.
  - c. Dealers or other agents authorized by the director of the parks and recreation department ~~whothat~~ sell out-of-state public trails and lands access permits may retain one dollar of the twenty-five dollar per year fee and the remainder of the fees collected under this subsection must be deposited in the state snowmobile fund.

**SECTION 2. AMENDMENT.** Section 39-24-11 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-24-11. Penalties.**

1. Any person who violates ~~subsection;~~
  - a. Subsection 12 of section 39-24-09 must be assessed a fee of one hundred dollars. ~~Any person who violates subdivision;~~
  - b. Subdivision b or g of subsection 5 of section 39-24-09 is guilty of a class B misdemeanor. ~~Any person who violates subdivision;~~
  - c. Subdivision c of subsection 5 of section 39-24-09 is guilty of an infraction or a class B misdemeanor as determined by section 39-24.1-07. ~~Any person who violates subsection;~~

- d. Subsection 11 of section 39-24-09 is guilty of a class B misdemeanor and must be assessed a fine of at least one hundred dollars. ~~Any person who violates any; and~~
- e. Any other provision of section 39-24-09 must be assessed a fee of twenty dollars.
2. Any person, unless specifically exempted, who fails to register or fails to display a decal or permit as required by sections 39-24-02 and 39-24-04 must be assessed a fee of fifty dollars. If the person provides proof of registration after the violation, the fee may be reduced by one-half.
3. Any person who violates any other provision of this chapter for which a specific penalty is not provided must be assessed a fee of ten dollars.

Approved April 6, 2023

Filed April 10, 2023

## CHAPTER 365

### HOUSE BILL NO. 1381

(Representatives Ostlie, Cory, Grueneich, Hagert, Louser, D. Ruby, Satrom)  
(Senators Conley, Klein, Larsen, Meyer)

AN ACT to create and enact a new section to chapter 39-34 of the North Dakota Century Code, relating to classifying a transportation network company driver as an independent contractor.

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

**SECTION 1.** A new section to chapter 39-34 of the North Dakota Century Code is created and enacted as follows:

#### **Transportation network company driver - Independent contractor.**

1. As used in this section:

a. "Transportation network company" means a person that:

(1) Maintains a digital network to facilitate services by transportation network company drivers to a person seeking those services; and

(2) Accepts requests from the public only through the organization's digital network and not by telephone, facsimile, or in person at a retail location.

b. "Transportation network company driver" does not include a person transporting freight, sealed or closed envelopes, boxes, parcels, or other similar sealed or closed containers for compensation. The term means a person that:

(1) Enters a written agreement with a transportation network company to use the transportation network company's digital network to connect with an individual seeking services offered by the transportation network company driver;

(2) Performs services for a person through a transportation network company's digital network in exchange for compensation or payment; and

(3) Does not perform services at a physical business location operated by the transportation network company in the state.

2. A transportation network company driver is an independent contractor and not an employee of a transportation network company if the transportation network company:

a. Enters an agreement with the transportation network company driver that the transportation network company driver is an independent contractor and not an employee of the transportation network company.

- b. Does not unilaterally prescribe specific hours during which the transportation network company driver must be available to accept service requests submitted through the transportation network company's digital network.
- c. Does not prohibit the transportation network company driver from engaging in outside employment or performing services through other transportation network companies except while the transportation network company driver is engaged in performing services through the transportation network company's digital network.
- d. May not terminate the contract of the transportation network company driver for a driver's refusal to accept a specific transportation service or delivery service request.
- e. Does not prohibit the transportation network company driver from using a vehicle with an internal combustion engine.

Approved March 30, 2023

Filed April 3, 2023

# MUNICIPAL GOVERNMENT

## CHAPTER 366

### HOUSE BILL NO. 1293

(Representatives Pyle, Nathe, Roers Jones, Schreiber-Beck, Warrey)  
(Senators Cleary, Dever, Lee, Sorvaag)

AN ACT to amend and reenact sections 40-04.1-01, 40-04.1-05, 40-08-06, 40-08-10, 40-09-04, 40-09-09, 40-14-03, 40-15-03, 40-49-05, 40-49-07, and 40-49-08 of the North Dakota Century Code, relating to election of city commissioners, city council members, and park district commissioners.

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

**SECTION 1. AMENDMENT.** Section 40-04.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **40-04.1-01. City council - Membership - Terms.**

The governing body of a city operating under the modern council form of government is the city council, which is composed of not less than four members, one of whom is the mayor, all elected at large or by wards. Candidates for the council shall run for either mayor or council member but not both at the same time. The terms of members of the council shall be ~~four years, or commencing on the first of July of the year in which the member was elected and~~ until their successors are elected and qualified. However, the council shall establish by ordinance a procedure whereby one-half of all council members, as nearly as is practicable, are elected biennially. The number of council members may be increased or decreased pursuant to section 40-06-09.

**SECTION 2. AMENDMENT.** Section 40-04.1-05 of the North Dakota Century Code is amended and reenacted as follows:

##### **40-04.1-05. Meetings - Regular, special, and for organization.**

The city council shall hold its regular meetings at least once a month and may prescribe by ordinance the manner in which special meetings may be called. The city council shall establish by resolution or ordinance the date of its regular meetings. The ~~first meeting for the organization of the city council must be held on the fourth Tuesday in June in conjunction with the first meeting in July~~ of each even-numbered year.

**SECTION 3. AMENDMENT.** Section 40-08-06 of the North Dakota Century Code is amended and reenacted as follows:

##### **40-08-06. Term of office of council members - Staggered terms provided for in cities where other than ten council members elected.**

Council members shall hold office for four years and until their successors are elected and qualified. Terms of council members must be arranged so that one-half of

the council members in any city, as nearly as practicable, are elected in any one election. When a city first adopts the council form of government or changes the number of council members, or when a city that has adopted the commission system of government returns to the city council form of government as provided by section 40-04-08, the alternation of the terms of the council members must be perfected as follows: of the council members elected in each ward, the one receiving the greater number of votes shall serve until the ~~fourth Tuesday in June~~first day of July following the second succeeding biennial election and the one receiving the lesser number of votes shall serve until the ~~fourth Tuesday in June~~first day of July following the biennial election succeeding the council member's election; if the city is not divided into wards, the one-half of the council members elected in the entire city receiving the greater number of votes shall serve until the ~~fourth Tuesday in June~~first day of July following the second succeeding biennial election and the one-half of the council members elected in the entire city receiving the lesser number of votes shall serve until the ~~fourth Tuesday in June~~first day of July following the biennial election succeeding their election. Whenever, for any reason, vacancies exist on the council which require an unexpired term to be filled by election, the unexpired term must be designated on the ballot separate from any other regular term or terms that may also appear on the ballot. Candidates seeking nomination to an unexpired term are required to indicate whether or not they are seeking a regular term of office or an unexpired term of office on their nominating petitions as set forth in section 40-21-07.

**SECTION 4. AMENDMENT.** Section 40-08-10 of the North Dakota Century Code is amended and reenacted as follows:

**40-08-10. Meetings of council - Regular, special, and for organization.**

The city council shall hold its regular meetings at least once a month on a date certain established by resolution or ordinance of the council, and may prescribe by ordinance the manner in which special meetings may be called as well as the establishment of any additional regular meetings desired. If a regular meeting falls upon a holiday, the meeting must be held upon the next business day with the same effect as if conducted upon the day appointed. All regular and special meetings must be held at a time and place designated by the city council. The ~~first meeting for the organization of the city council must be held on the fourth~~in conjunction with the first Tuesday~~meeting~~ meeting in ~~June~~July of each even-numbered year.

**SECTION 5. AMENDMENT.** Section 40-09-04 of the North Dakota Century Code is amended and reenacted as follows:

**40-09-04. Commissioners - Terms - Resignations.**

Each commissioner and the president of the board of city commissioners shall hold office for four years commencing on the ~~fourth Tuesday in June~~first day of July of the year in which the officer was elected and until a successor has been duly elected and qualified. The commission shall establish by ordinance a procedure whereby one-half of all commissioners, as nearly as practicable, are elected biennially. The president or any other member of the board may resign from office by filing a written resignation with the city auditor, who shall submit the resignation to the board of city commissioners at its next regular meeting or at a special meeting called for consideration of the resignation. The resignation is effective upon its acceptance by the board.

**SECTION 6. AMENDMENT.** Section 40-09-09 of the North Dakota Century Code is amended and reenacted as follows:

**40-09-09. Vice president and acting president of board - Powers to act.**

At the first meeting of the board after ~~each biennial election~~ the newly elected commissioners take office, one of its own members ~~shall~~ must be elected vice president. The vice president shall perform all the duties of the office of president in the absence or disability of the president to act. In the absence or disability to act of both the president and the vice president, the board shall elect one of its members as acting president, who ~~shall have~~ has all the powers and ~~perform~~ performs all the duties of the president during the absence or disability.

**SECTION 7. AMENDMENT.** Section 40-14-03 of the North Dakota Century Code is amended and reenacted as follows:

**40-14-03. When term of elective officer begins.**

Under the city council form of government, the term of each elective officer commences on the ~~fourth Tuesday of June~~ first day of July of the year in which the officer is elected.

**SECTION 8. AMENDMENT.** Section 40-15-03 of the North Dakota Century Code is amended and reenacted as follows:

**40-15-03. When term of elective officers begins.**

The term of each elective officer in a city operating under the commission system of government commences on the ~~fourth Tuesday in June~~ first day of July of the year in which the officer is elected.

**SECTION 9. AMENDMENT.** Section 40-49-05 of the North Dakota Century Code is amended and reenacted as follows:

**40-49-05. Board of park commissioners in city - Terms.**

1. The powers of a park district in a city must be exercised by a board of park commissioners consisting of five or three members, as determined by the governing body of the city in creating the park district or pursuant to sections 40-49-07.1 and 40-49-07.2. Except as provided in subsection 2, each commissioner shall hold office for a term of four years and until a successor is elected and qualified. The term of office of a commissioner begins ~~two weeks after the regular biennial city election at which the commissioner is elected~~ on the first day of July.
2. Members of a newly created five-member board shall hold office as follows:
  - a. Three members until ~~two weeks~~ the first day of July after the next regular biennial city election.
  - b. Two members until two years from the time mentioned in subdivision a.
3. Members of boards of park commissioners which existed before July 1, 1987, shall hold office on the staggered basis in effect on June 30, 1986.
4. Members of a newly created three-member board shall hold office as follows:
  - a. Two members until ~~two weeks~~ the first day of July after the next regular biennial city election.
  - b. One member until ~~two years~~ the first day of July after the next regular biennial city election.

**SECTION 10. AMENDMENT.** Section 40-49-07 of the North Dakota Century Code is amended and reenacted as follows:

**40-49-07. Election and qualification of members of board of park commissioners.**

The members of the board of park commissioners shall possess the qualifications of electors of the city and must be elected by the qualified electors of the park district. The members of the first board may be elected at any regular city election or at a special election called for that purpose by the governing body of the city. Thereafter, members of the board must be elected at the regular city elections. Such members shall qualify ~~within two weeks after~~ by the first day of July following their election by taking and filing with the city auditor the oath prescribed for civil officers. The board of park commissioners may enter into an agreement with the governing body of the city concerning sharing of election personnel, printing of election materials, and apportioning of election expenses.

**SECTION 11. AMENDMENT.** Section 40-49-08 of the North Dakota Century Code is amended and reenacted as follows:

**40-49-08. Organization of board of park commissioners - City auditor to act as treasurer of board or board to appoint clerk.**

~~Two weeks after their election~~ At the first meeting of the board of park commissioners in July after the regular biennial city election, the members of the ~~board of park commissioners~~ shall organize the board by selecting a president and a vice president. The city auditor shall be ex officio treasurer of the park district or the board may appoint a clerk and such other employees as shall be deemed needed for the efficient conduct of the district's business and shall fix their compensation. The clerk shall take the oath prescribed for civil officers and shall obtain such bond as may be required by the board.

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 367

### HOUSE BILL NO. 1495

(Representatives Wagner, Bosch, Dockter, Hauck, Headland, Louser, McLeod, Nathe,  
Pyle, D. Ruby)  
(Senators Meyer, Sorvaag)

AN ACT to amend and reenact subsection 4 of section 40-05-24 of the North Dakota Century Code, relating to requirements for cities granting property tax incentives; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 40-05-24 of the North Dakota Century Code is amended and reenacted as follows:

4. The term "~~negotiation~~" ~~as used in this section~~As used in this section:
  - a. "Negotiation" means the governing body of an affected county or school district may negotiate the terms of participating in the tax incentive, including the duration of the tax incentive and the taxable value selected for the base year for purposes of computing tax increments.
  - b. "Property tax incentive" includes a tax increment finance district used to offset public or private costs for urban renewal.

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

Approved March 20, 2023

Filed March 21, 2023

## CHAPTER 368

### SENATE BILL NO. 2138

(Senators Rummel, Sickler)  
(Representatives Lefor, Steiner)

AN ACT to amend and reenact section 40-18-05 of the North Dakota Century Code, relating to municipal judges.

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

**SECTION 1. AMENDMENT.** Section 40-18-05 of the North Dakota Century Code is amended and reenacted as follows:

**40-18-05. Municipal judge is conservator of the peace --Powers on Sunday restricted.**

The municipal judge within the judge's city shall be a conservator of the peace and shall have power to bring persons before the municipal judge ~~forthwith for trial~~ which are charged with violations of municipal ordinances. The municipal judge's court shall be open every day except Sundays determined by the city to hear and determine cases cognizable before the municipal judge. ~~The municipal judge shall perform no official act on Sunday but may receive complaints, issue process, take bail, and receive verdicts.~~

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 369

### SENATE BILL NO. 2391

(Senators Sickler, Rummel, Vedaa)

AN ACT to amend and reenact subsection 7 of section 40-63-01, sections 40-63-03, 40-63-04, and 40-63-05, and subsection 5 of section 40-63-07 of the North Dakota Century Code, relating to renaissance zones and income and property tax incentives related to renaissance zones.

#### 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:
  - a. For an income tax or property tax exemption under this chapter which exceeds five taxable years, seventy-five percent of the current true and full value for residential property, excluding owner-occupied single-family residential property, or commercial property for a business or investment purpose.
  - b. For an income tax or property tax exemption under this chapter of five taxable years or less, fifty percent of the current true and full value for residential property, excluding owner-occupied single-family residential property, or commercial buildings or property, for a business or investment purpose.
  - c. Fifty percent of the current true and full value for public utility infrastructure and twenty.
  - d. Twenty percent of the current true and full value for owner-occupied single-family homes residential property.

<sup>207</sup> **SECTION 2. AMENDMENT.** Section 40-63-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **40-63-03. Renaissance zones.**

1. A city may apply to the department of commerce division of community services to designate a portion of that city as a renaissance zone if the following criteria are met:
  - a. The geographic area proposed for the renaissance zone is located wholly within the boundaries of the city submitting the application.

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<sup>207</sup> Section 40-63-03 was also amended by section 1 of House Bill No. 1266, chapter 370.

- b. The application includes a development plan.
- c. The proposed renaissance zone is not more than thirty-four square blocks, except in a city with a population of greater than five thousand the renaissance zone may exceed thirty-four square blocks at the rate of one additional block for each additional five thousand population to a maximum size of forty-nine blocks. Population is based upon the most recent federal decennial census or federal census estimate.

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.

- d. Except as provided under subdivision g, the proposed renaissance zone has a continuous boundary and all blocks are contiguous.
  - e. The proposed land usage includes both commercial and residential property.
  - 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~~ten years.
  - g. The proposed renaissance zone may have ~~a single exception~~up to two exceptions to the continuous boundary and contiguous block requirements under subdivision d if the ~~area~~areas of the excepted noncontiguous blocks ~~does~~do not exceed three square blocks each.
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 management on an annual basis until all designated zones expire.
3. The department of commerce division of community services shall consider the following criteria in designating a renaissance zone:
- a. The viability of the development plan.

- b. The incorporation and enhancement of unique natural and historic features into the development plan.
  - c. Whether the development plan is creative and innovative in comparison to other applications.
  - d. Public and private commitment to and other resources available for the proposed renaissance zone, including the provisions for a renaissance fund organization.
  - e. How renaissance zone designation would relate to a broader plan for the community as a whole.
  - f. How the local regulatory burden, in particular that burden associated with the renovation of historic properties and that burden associated with mixed use development, will be eased for developers and investors in the renaissance zone.
  - g. The strategies for the promotion, development, and management of the zone, including the use of a local zone authority if designated.
  - h. Any other information required by the office.
4. The department of commerce division of community services may not designate a portion of a city as a renaissance zone unless, as a part of the application, the city provides a resolution from the governing body of the city that states if the renaissance zone designation is granted, persons and property within the renaissance zone are exempt from taxes as provided in sections 40-63-04 through 40-63-07.
  5. A city may not propose or be part of more than one renaissance zone.
  6.
    - a. A parcel of property may be exempted from property taxes under section 40-63-05 ~~only more than once, but during~~. During the five taxable years of eligibility for that an exemption from property taxes under section 40-63-05, the property tax exemption transfers with the transfer of the property to a qualifying user. A parcel of property which previously received a property tax exemption under section 40-63-05 may not be eligible for a subsequent property tax exemption under section 40-63-05 until thirty years have lapsed from the completion date of the most recent project on the property.
    - b. The ownership or lease of, or investment in, a parcel of property may qualify for exemption or credit under section 40-63-04 ~~only more than once, but during~~. During the five taxable years of eligibility for that an exemption or credit under section 40-63-04, the exemption or credit under section 40-63-04 transfers with the transfer of the property to a qualified user and with respect to the year in which the transfer is made must be prorated for use of the property during that year.
  7. A city may apply to the department of commerce division of community services at any time during the duration of a zone to expand a previously approved renaissance zone that is less than the maximum size allowed under subdivision c of subsection 1. If the expansion is approved by the department

of commerce division of community services, the blocks in the expansion are eligible for up to fifteen years of renaissance zone status.

8. The use of grant funds as the sole source of investment in the purchase of a building or space in a building does not qualify a taxpayer for any tax exemption or credit available under the chapter, and grant funds may not be counted in determining if the cost of rehabilitation meets or exceeds the current true and full value of the building.
9. If a portion of an approved renaissance zone is not progressing, the city may request the department of commerce division of community services to permit deleting that portion and to make an adjustment of the boundaries to add another equal, contiguous area to the original zone.
10. If within a renaissance zone there is property that is included in a tax increment financing district, the city in which the property is located shall provide the department of commerce an annual report regarding any such property at the time requested by the department of commerce. The report required under this subsection must identify the property, provide the expected duration of inclusion of the property in the tax increment financing district and the renaissance zone, and identify any property and income tax benefits of the property and the expected duration of those benefits. The department of commerce shall deliver an annual report compiling the information required under this subsection to the legislative management interim committee on taxation issues or upon request of any other interim committee of the legislative management.

**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 57-38-30.3 for fiveup to eight taxable years beginning with the date of occupancy or completion of rehabilitation.
2. A taxpayer that purchases, leases, 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 tax on income derived from the business or investment locations within the zone for fiveup to eight taxable years, beginning with the date of purchase, lease, or completion of rehabilitation.
  - a. The maximum amount of income that a taxpayer may exempt from tax under this subsection for any taxable year is five hundred thousand dollars. The limitation in this subdivision applies to the sum of the exempt income derived from the taxpayer's business and investment interests in all zone projects.
  - b. If a zone project consists of a physical expansion of an existing building owned and used by the taxpayer for business or investment purposes, the amount of income exempt from tax under this subsection is limited to an amount equal to the income derived from the business, or from the investment use of the building, during the taxable year multiplied by a ratio

equal to the square footage added by the expansion divided by the total square footage of the building after expansion.

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 individual income tax liability as determined under section 57-38-30.3. The election must be made on the taxpayer's return as originally and timely filed. The election is irrevocable and binding for the duration of the exemptions provided in subsection 2 or this subsection. If an election is not made on the original return, 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 57-38.

**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~~eight 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~~eight taxable years following the date of purchase or completion of rehabilitation.

**SECTION 5. 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, ten million five hundred thousand dollars for investments in renaissance fund organizations. A renaissance fund organization that has received investments that qualify for the credits under this subsection shall use those investments to finance projects within a renaissance zone. If the

total amount of credits allowed under this section have been claimed, the renaissance fund organization allowance must terminate and additional credits may not be made available for investments in a renaissance fund organization.

Approved April 26, 2023

Filed April 27, 2023

## CHAPTER 370

### HOUSE BILL NO. 1266

(Representatives Dockter, Bosch, Heinert, Nathe)  
(Senators Cleary, Meyer)

AN ACT to amend and reenact section 40-63-03 of the North Dakota Century Code, relating to completion of existing approved projects and reapplication for renaissance zone designation following expiration of renaissance zone designations.

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

<sup>208</sup> **SECTION 1. AMENDMENT.** Section 40-63-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **40-63-03. Renaissance zones.**

1. A city may apply to the department of commerce division of community services to designate a portion of that city as a renaissance zone if the following criteria are met:
  - a. The geographic area proposed for the renaissance zone is located wholly within the boundaries of the city submitting the application.
  - b. The application includes a development plan.
  - c. The proposed renaissance zone is not more than thirty-four square blocks, except in a city with a population of greater than five thousand the renaissance zone may exceed thirty-four square blocks at the rate of one additional block for each additional five thousand population to a maximum size of forty-nine blocks.
    - (1) Population is based upon the most recent federal decennial census or federal census estimate.
    - (2) 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.
  - d. Except as provided under subdivision g, the proposed renaissance zone has a continuous boundary and all blocks are contiguous.
  - e. The proposed land usage includes both commercial and residential property.

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<sup>208</sup> Section 40-63-03 was also amended by section 2 of Senate Bill No. 2391, chapter 369.

- f. The application includes the proposed duration of renaissance zone status, not to exceed fifteen years.
    - (1) 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.
    - (2) If a renaissance zone designated under this chapter expires, a city may reapply for a subsequent renaissance zone in the same manner an original renaissance zone is formed under this section.
    - (3) If a renaissance zone designated under this chapter expires, a city may reapply for renewal of the formerly expired renaissance zone in the current manner a renewal extension is granted by state law.
  - 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.
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 management on an annual basis until all designated zones expire.
  3. The department of commerce division of community services shall consider the following criteria in designating a renaissance zone:
    - a. The viability of the development plan.
    - b. The incorporation and enhancement of unique natural and historic features into the development plan.
    - c. Whether the development plan is creative and innovative in comparison to other applications.
    - d. Public and private commitment to and other resources available for the proposed renaissance zone, including the provisions for a renaissance fund organization.
    - e. How renaissance zone designation would relate to a broader plan for the community as a whole.

- f. How the local regulatory burden, in particular that burden associated with the renovation of historic properties and that burden associated with mixed use development, will be eased for developers and investors in the renaissance zone.
  - g. The strategies for the promotion, development, and management of the zone, including the use of a local zone authority if designated.
  - h. Any other information required by the office.
4. The department of commerce division of community services may not designate a portion of a city as a renaissance zone unless, as a part of the application, the city provides a resolution from the governing body of the city that states if the renaissance zone designation is granted, persons and property within the renaissance zone are exempt from taxes as provided in sections 40-63-04 through 40-63-07.
  5. A city may not propose or be part of more than one renaissance zone.
  6. A parcel of property may be exempted from property taxes under section 40-63-05 only once, but during the five taxable years of eligibility for that exemption, the property tax exemption transfers with the transfer of the property to a qualifying user. The ownership or lease of, or investment in, a parcel of property may qualify for exemption or credit under section 40-63-04 only once, but during the five taxable years of eligibility for that exemption or credit, the exemption or credit under section 40-63-04 transfers with the transfer of the property to a qualified user and with respect to the year in which the transfer is made must be prorated for use of the property during that year. Taxpayers eligible for a property or income tax incentive under this chapter for zone projects that are incomplete immediately preceding the expiration of the renaissance zone designation in the area in which the zone project is located may continue to receive the incentive for the time period during which the taxpayer was originally eligible to receive the incentive. For purposes of this subsection, the renaissance zone designation is considered expired when the proposed duration of renaissance zone and any subsequently granted extensions have lapsed.
  7. A city may apply to the department of commerce division of community services at any time during the duration of a zone to expand a previously approved renaissance zone that is less than the maximum size allowed under subdivision c of subsection 1. If the expansion is approved by the department of commerce division of community services, the blocks in the expansion are eligible for up to fifteen years of renaissance zone status.
  8. The use of grant funds as the sole source of investment in the purchase of a building or space in a building does not qualify a taxpayer for any tax exemption or credit available under the chapter, and grant funds may not be counted in determining if the cost of rehabilitation meets or exceeds the current true and full value of the building.
  9. If a portion of an approved renaissance zone is not progressing, the city may request the department of commerce division of community services to permit deleting that portion and to make an adjustment of the boundaries to add another equal, contiguous area to the original zone.

10. If within a renaissance zone there is property that is included in a tax increment financing district, the city in which the property is located shall provide the department of commerce an annual report regarding any such property at the time requested by the department of commerce. The report required under this subsection must identify the property, provide the expected duration of inclusion of the property in the tax increment financing district and the renaissance zone, and identify any property and income tax benefits of the property and the expected duration of those benefits. The department of commerce shall deliver an annual report compiling the information required under this subsection to the legislative management interim committee on taxation issues or upon request of any other interim committee of the legislative management.

Approved March 23, 2023

Filed March 23, 2023

# UNIFORM COMMERCIAL CODE

## CHAPTER 371

### HOUSE BILL NO. 1082

(Judiciary Committee)  
(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact a new subsection to section 41-08-03, a new subsection to section 41-08-10, sections 41-09-05.1, 41-09-07.1, 41-09-07.2, 41-09-26.1, 41-09-26.2, 41-09-34.1, and 41-09-46.1, and chapters 41-11 and 41-12 of the North Dakota Century Code, relating to the adoption of the Uniform Commercial Code amendments (2022); to amend and reenact sections 41-01-09, 41-01-12, 41-01-15, 41-01-20, 41-02-02, 41-02-06, 41-02-08, 41-02-09, 41-02-10, and 41-02-12, subsection 2 of section 41-02-16, section 41-02.1-02, subsection 1 of section 41-02.1-03, sections 41-02.1-07, 41-02.1-10, 41-02.1-11, 41-02.1-12, and 41-02.1-14, subsection 2 of section 41-02.1-17, subsection 1 of section 41-03-04, subsection 1 of section 41-03-05, sections 41-03-38, 41-03-66, 41-04.1-03, 41-04.1-09, 41-04.1-10, and 41-04.1-11, subsection 3 of section 41-04.1-15, subdivision b of subsection 2 of section 41-04.1-16, subsection 1 of section 41-04.1-18, subsection 1 of section 41-04.1-19, sections 41-04.1-25, 41-05-04, 41-05-16, 41-07-02, 41-07-06, 41-08-02, 41-08-06, 41-08-29, 41-09-02, 41-09-04, and 41-09-05, subsection 2 of section 41-09-13, section 41-09-14, subsection 3 of section 41-09-17, sections 41-09-18, 41-09-19, 41-09-20, and 41-09-21, subsection 1 of section 41-09-24, subsection 1 of section 41-09-25, sections 41-09-30, 41-09-32, 41-09-33, 41-09-34, 41-09-36, 41-09-37, 41-09-43, 41-09-44, 41-09-50, 41-09-51, and 41-09-52, subsection 6 of section 41-09-54, section 41-09-61, subdivision b of subsection 1 of section 41-09-66, sections 41-09-68, 41-09-70, and 41-09-80, subsection 2 of section 41-09-98, section 41-09-102, subdivision a of subsection 1 of section 41-09-105, section 41-09-108, subsection 1 of section 41-09-111, subsection 1 of section 41-09-114, section 41-09-115, subdivision a of subsection 1 of section 41-09-116, and sections 41-09-119 and 41-09-123 of the North Dakota Century Code, relating to the adoption of the Uniform Commercial Code amendments (2022).

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

**SECTION 1. AMENDMENT.** Section 41-01-09 of the North Dakota Century Code is amended and reenacted as follows:

##### **41-01-09. (1-201) General definitions.**

1. Unless the context otherwise requires, words or phrases defined in this section, or in additional definitions contained in other chapters of this title which apply to particular chapters or parts of chapters, have the meanings stated.
2. Subject to definitions contained in other chapters of this title which apply to particular chapters or parts of chapters:

- a. "Action", in the sense of a judicial proceeding, includes recoupment, counterclaim, setoff, suit in equity, and any other proceeding in which rights are determined.
- b. "Aggrieved party" means a party entitled to pursue a remedy.
- c. "Agreement", as distinguished from "contract", means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided under section 41-09-17.
- d. "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.
- e. "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.
- f. "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.
- g. "Branch" includes a separately incorporated foreign branch of a bank.
- h. "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.
- i. "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a pre-existing contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under chapter 41-02 may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
- j. "Conspicuous", with reference to a term, means so written, displayed, or presented that, based on the totality of the circumstances, a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. ~~Conspicuous terms include the following:~~

- (1) ~~A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and~~
- (2) ~~Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.~~
- k. "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.
- l. "Contract", as distinguished from "agreement", means the total legal obligation that results from the parties' agreement as determined by this title as supplemented by any other applicable laws.
- m. "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.
- n. "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.
- o. "Delivery", with respect to an electronic document of title, means voluntary transfer of control and, with respect to an instrument, a tangible document of title, or an authoritative tangible copy of a record evidencing chattel paper, means voluntary transfer of possession.
- p. "Document of title" means a record that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.
- q. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- r. "Fault" means a default, breach, or wrongful act or omission.
- r.s. "Fungible goods" means:
- (1) Goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or
- (2) Goods that by agreement are treated as equivalent.

s.-t. "Genuine" means free of forgery or counterfeiting.

t.-u. "Good faith", except as otherwise provided in chapter 41-05, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

u.-v. "Holder" means:

- (1) The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;
- (2) The person in possession of a document of title if the goods are deliverable either to bearer or to the order of the person in possession; or
- (3) The person in control, other than pursuant to subsection 7 of section 41-07-06, of a negotiable electronic document of title.

v.-w. "Insolvency proceeding" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

w.-x. "Insolvent" means:

- (1) Having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;
- (2) Being unable to pay debts as they become due; or
- (3) Being insolvent within the meaning of federal bankruptcy law.

x.-y. "Money" means a medium of exchange that is currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization, or by agreement between two or more countries. The term does not include an electronic record that is a medium of exchange recorded and transferable in a system that existed and operated for the medium of exchange before the medium of exchange was authorized or adopted by the government.

y.-z. "Organization" means a person other than an individual.

z.-aa. "Party", as distinguished from "third party", means a person that has engaged in a transaction or made an agreement subject to this title.

aa.-bb. "Person" means an individual, a corporation, a business trust, an estate, a trust, a partnership, a limited liability company, an association, a joint venture, a government, a governmental subdivision, an agency, or an instrumentality, ~~a public corporation~~, or any other legal or commercial entity. The term includes a protected series, however denominated, of an entity if the protected series is established under law other than this title which limits, or limits if conditions specified under the law are satisfied, the ability of a creditor of the entity or of any other protected series of the entity to satisfy a claim from assets of the protected series.

~~bb-cc.~~ "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered.

~~ee-dd.~~ "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

~~dd-ee.~~ "Purchaser" means a person that takes by purchase.

~~ee-ff.~~ "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.

~~ff-gg.~~ "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

~~gg-hh.~~ "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

~~hh-ii.~~ "Right" includes remedy.

~~ii-jj.~~ "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to chapter 41-09. "Security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under section 41-02-46, but a buyer may also acquire a "security interest" by complying with chapter 41-09. Except as otherwise provided in section 41-02-53, the right of a seller or lessor of goods under chapter 41-02 or 41-02.1 to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with chapter 41-09. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under section 41-02-46 is limited in effect to a reservation of a "security interest". Whether a transaction in the form of a lease creates a "security interest" is determined under section 41-01-11.

~~jj-kk.~~ "Send", in connection with a ~~writing, record, or notice~~notification, means:

- ~~(1) To deposit in the mail or deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified on the instrument or otherwise agreed, or if there be none, addressed to any address reasonable under the circumstances; or~~
- ~~(2) In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.~~To cause the record or

notification to be received within the time it would have been received if properly sent under paragraph 1.

~~kk. "Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing~~

ll. "Sign" means, with present intent to authenticate or adopt a record, to execute or adopt a tangible symbol, or attach to or logically associate with the record an electronic symbol, sound, or process. "Signed", "signing", and "signature" have corresponding meanings.

~~mm.~~ "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.

~~nn.~~ "Surety" includes a guarantor or other secondary obligor.

~~oo.~~ "Term" means a portion of an agreement that relates to a particular matter.

~~pp.~~ "Unauthorized signature" means a signature made without actual, implied, or apparent authority. The term includes a forgery.

~~qq.~~ "Warehouse receipt" means a document of title issued by a person engaged in the business of storing goods for hire.

~~rr.~~ "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

**SECTION 2. AMENDMENT.** Section 41-01-12 of the North Dakota Century Code is amended and reenacted as follows:

**41-01-12. (1-204) Value.**

Except as otherwise provided in chapters 41-03, 41-04, ~~and 41-05~~, and 41-12, a person gives value for rights if the person acquires the rights:

1. In return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection;
2. As security for, or in total or partial satisfaction of, a pre-existing claim;
3. By accepting delivery under a pre-existing contract for purchase; or
4. In return for any consideration sufficient to support a simple contract.

**SECTION 3. AMENDMENT.** Section 41-01-15 of the North Dakota Century Code is amended and reenacted as follows:

**41-01-15. (1-301) Territorial applicability - Parties' power to choose applicable law.**

1. Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall

govern their rights and duties. Failing such agreement, this title applies to transactions bearing an appropriate relation to this state.

2. If one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law, including the conflict of laws rules, so specified:
  - a. Rights of creditors against sold goods. Section 41-02-47.
  - b. Applicability of the chapter on leases. Sections 41-02.1-05 and 41-02.1-06.
  - c. Applicability of the chapter on bank deposits and collections. Section 41-04-02.
  - d. Governing law in the chapter on funds transfers. Section 41-04.1-38.
  - e. Letters of credit. Section 41-05-16.
  - f. Applicability of the chapter on investment securities. Section 41-08-10.
  - g. Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. Sections 41-09-21 through 41-09-27.
  - h. Governing law in the chapter on controllable electronic records. Section 41-12-07.

**SECTION 4. AMENDMENT.** Section 41-01-20 of the North Dakota Century Code is amended and reenacted as follows:

**41-01-20. (1-306) Waiver or renunciation of claim or right after breach.**

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an ~~authenticated~~ signed record.

**SECTION 5. AMENDMENT.** Section 41-02-02 of the North Dakota Century Code is amended and reenacted as follows:

**41-02-02. (2-102) Scope - Certain security and other transactions excluded from this chapter.**

1. Unless the context otherwise requires, and except as provided in subsection 3, this chapter applies to transactions in goods; it and, in the case of a hybrid transaction, it applies to the extent provided in subsection 2.
2. In a hybrid transaction:
  - a. If the sale-of-goods aspects do not predominate, only the provisions of this chapter which relate primarily to the sale-of-goods aspects of the transaction apply, and the provisions that relate primarily to the transaction as a whole do not apply.
  - b. If the sale-of-goods aspects predominate, this chapter applies to the transaction but does not preclude application in appropriate circumstances

of other law to aspects of the transaction which do not relate to the sale of goods.

3. This chapter does not apply:

- a. Apply to any transaction which although that, even though in the form of an unconditional contract to sell or present sale is intended to operate, operates only as to create a security transaction nor does this chapter impair interest; or
- b. Impair or repeal any statute regulating sales to consumers, farmers, or other specified classes of buyers.

**SECTION 6. AMENDMENT.** Section 41-02-06 of the North Dakota Century Code is amended and reenacted as follows:

**41-02-06. (2-106) Definitions.**

1. In this chapter, unless the context otherwise requires:
  - a. "Agreement" and "contract" are limited to those relating to the present or future sale of goods.
  - b. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time.
  - c. "Present sale" means a sale that is accomplished by the making of the contract.
  - d. "Sale" consists in the passing of title from the seller to the buyer for a price (section 41-02-46).
2. "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance.
3. Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.
4. "Hybrid transaction" means a single transaction involving a sale of goods and:
  - a. The provision of services;
  - b. A lease of other goods; or
  - c. A sale, lease, or license of property other than goods.
5. "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

**SECTION 7. AMENDMENT.** Section 41-02-08 of the North Dakota Century Code is amended and reenacted as follows:

**41-02-08. (2-201) Formal requirements - Statute of frauds.**

1. Except as otherwise provided in this section, a contract for the sale of goods for the price of five hundred dollars or more is not enforceable by way of action or defense unless there is ~~some writing~~ a record sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by ~~that~~ the party's authorized agent or broker. A writing ~~record~~ is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this subsection beyond the quantity of goods shown in ~~such writing~~ the record.
2. Between merchants if within a reasonable time a writing ~~record~~ in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection 1 against ~~such~~ the party unless written notice in a record of objection to its contents is given within ten days after it is received.
3. A contract ~~which~~ that does not satisfy the requirements of subsection 1 but which is valid in other respects is enforceable:
  - a. If the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement;
  - b. If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or
  - c. With respect to goods for which payment has been made and accepted or which have been received and accepted (section 41-02-69).

**SECTION 8. AMENDMENT.** Section 41-02-09 of the North Dakota Century Code is amended and reenacted as follows:

**41-02-09. (2-202) Final written expression - Parol or extrinsic evidence.**

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing ~~record~~ intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

1. By course of performance, course of dealing, or usage of trade (section 41-01-17); and
2. By evidence of consistent additional terms unless the court finds the writing ~~record~~ to have been intended also as a complete and exclusive statement of the terms of the agreement.

**SECTION 9. AMENDMENT.** Section 41-02-10 of the North Dakota Century Code is amended and reenacted as follows:

**41-02-10. (2-203) Seals inoperative.**

The affixing of a seal to a ~~writing~~record evidencing a contract for sale or an offer to buy or sell goods does not constitute the ~~writing~~record a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

**SECTION 10. AMENDMENT.** Section 41-02-12 of the North Dakota Century Code is amended and reenacted as follows:

**41-02-12. (2-205) Firm offers.**

An offer by a merchant to buy or sell goods in a signed ~~writing~~which record that by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

**SECTION 11. AMENDMENT.** Subsection 2 of section 41-02-16 of the North Dakota Century Code is amended and reenacted as follows:

2. A signed agreement ~~which~~that excludes modification or rescission except by a signed writing ~~or other signed record~~ cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

**SECTION 12. AMENDMENT.** Section 41-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**41-02.1-02. (2A-102) Scope.**

1. This chapter applies to any transaction, regardless of form, that creates a lease ~~and, in the case of a hybrid lease, it applies to the extent provided in subsection 2.~~
2. In a hybrid lease:
  - a. If the lease-of-goods aspects do not predominate:
    - (1) Only the provisions of this chapter which relate primarily to the lease-of-goods aspects of the transaction apply, and the provisions that relate primarily to the transaction as a whole do not apply;
    - (2) Section 41-02.1-18 applies if the lease is a finance lease; and
    - (3) Section 41-02.1-48 applies to the promises of the lessee in a finance lease to the extent the promises are consideration for the right to possession and use of the leased goods; and
  - b. If the lease-of-goods aspects predominate, this chapter applies to the transaction, but does not preclude application in appropriate circumstances of other law to aspects of the lease which do not relate to the lease of goods.

**SECTION 13. AMENDMENT.** Subsection 1 of section 41-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

1. In this chapter unless the context otherwise requires:
  - a. "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
  - b. "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.
  - c. "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.
  - d. "Conforming" goods or performance under a lease contract means goods or performance that is in accordance with the obligations under the lease contract.
  - e. "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed twenty-five thousand dollars.
  - f. "Fault" means wrongful act, omission, breach, or default.
  - g. "Finance lease" means a lease in which:
    - (1) The lessor does not select, manufacture, or supply the goods;
    - (2) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and
    - (3)
      - (a) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;
      - (b) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;
      - (c) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations, or modifications of remedies, or liquidated damages, including those of any third party such as the manufacturer of the goods, provided to the lessor by

the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

- (d) Only if the lease is not a consumer lease, before the lessee signs the lease contract the lessor informs the lessee in writing of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, that the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and that the lessee may contact the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.
- h. "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (section 41-02.1-39), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.
- i. "Hybrid lease" means a single transaction involving a lease of goods and:
- (1) The provision of services;
  - (2) A sale of other goods; or
  - (3) A sale, lease, or license of property other than goods.
- j. "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.
- ~~j-k.~~ "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.
- ~~k-l.~~ "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance (as provided in this chapter). Unless the context clearly indicates otherwise, the term includes a sublease agreement.
- ~~t-m.~~ "Lease contract" means the total legal obligation that results from the lease agreement as affected by this chapter and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

- m-n. "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.
- n-o. "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.
- o-p. "Lessee in ordinary course of business" means a person who, in good faith and without knowledge that the lease is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a pre-existing lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
- p-q. "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.
- q-r. "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.
- r-s. "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.
- s-t. "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, regardless of whether it is sufficient to perform the lease contract.
- t-u. "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.
- u-v. "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.
- v-w. "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.
- w-x. "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.
- x-y. "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.
- y-z. "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

~~z.aa.~~ "Termination" occurs when either party under a power created by agreement or law puts an end to the lease contract otherwise than for default.

**SECTION 14. AMENDMENT.** Section 41-02.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**41-02.1-07. (2A-107) Waiver or renunciation of claim or right after default.**

Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a ~~written~~ waiver or renunciation in a signed and record delivered by the aggrieved party.

**SECTION 15. AMENDMENT.** Section 41-02.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**41-02.1-10. (2A-201) Statute of frauds.**

1. A lease contract is not enforceable by way of action or defense unless:
  - a. The total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than one thousand dollars; or
  - b. There is a writing record, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.
2. Any description of leased goods or of the lease term is sufficient and satisfies subdivision b of subsection 1, whether or not it is specific, if it reasonably identifies what is described.
3. A writing record is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subdivision b of subsection 1 beyond the lease term and the quantity of goods shown in the writing record.
4. A lease contract that does not satisfy the requirements of subsection 1, but which is valid in other respects, is enforceable:
  - a. If the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;
  - b. If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or
  - c. With respect to goods that have been received and accepted by the lessee.

5. The lease term under a lease contract referred to in subsection 4 is:
  - a. If there is a writingrecord signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;
  - b. If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or
  - c. A reasonable lease term.

**SECTION 16. AMENDMENT.** Section 41-02.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**41-02.1-11. (2A-202) Final written expression - Parol or extrinsic evidence.**

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writingrecord intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented by course:

1. Course of dealing or usage of trade or by course of performance; and by evidence
2. Evidence of consistent additional terms unless the court finds the writingrecord to have been intended also as a complete and exclusive statement of the terms of the agreement.

**SECTION 17. AMENDMENT.** Section 41-02.1-12 of the North Dakota Century Code is amended and reenacted as follows:

**41-02.1-12. (2A-203) Seals inoperative.**

The affixing of a seal to a writingrecord evidencing a lease contract or an offer to enter into a lease contract does not render the writingrecord a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

**SECTION 18. AMENDMENT.** Section 41-02.1-14 of the North Dakota Century Code is amended and reenacted as follows:

**41-02.1-14. (2A-205) Firm offers.**

An offer by a merchant to lease goods to or from another person in a signed writingrecord that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed three months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

**SECTION 19. AMENDMENT.** Subsection 2 of section 41-02.1-17 of the North Dakota Century Code is amended and reenacted as follows:

2. A signed lease agreement that excludes modification or rescission except by a signed writingrecord may not be otherwise modified or rescinded, but, except

as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

**SECTION 20. AMENDMENT.** Subsection 1 of section 41-03-04 of the North Dakota Century Code is amended and reenacted as follows:

1. "Negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:
  - a. Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
  - b. Is payable on demand or at a definite time; and
  - c. Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, except that the promise or order may contain an undertaking or power to give, maintain, or protect collateral to secure payment, an authorization or power to the holder to confess judgment or realize on or dispose of collateral, ~~or a waiver of the benefit of any law intended for the advantage or protection of any obligor,~~ a term that specifies the law that governs the promise or order, or an undertaking to resolve in a specified forum a dispute concerning the promise or order.

**SECTION 21. AMENDMENT.** Subsection 1 of section 41-03-05 of the North Dakota Century Code is amended and reenacted as follows:

1. "Issue" means ~~the~~:
  - a. The first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person; ~~or~~
  - b. If agreed by the payee, the first transmission by the drawer to the payee of an image of an item and information derived from the item which enables the depository bank to collect the item by transferring or presenting under federal law an electronic check.

**SECTION 22. AMENDMENT.** Section 41-03-38 of the North Dakota Century Code is amended and reenacted as follows:

**41-03-38. (3-401) Signature.**

4. A person is not liable on an instrument unless the person signed the instrument or the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under section 41-03-39.

2. ~~A signature may be made manually or by means of a device or machine and by the use of any name, including any trade or assumed name, or by any word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.~~

**SECTION 23. AMENDMENT.** Section 41-03-66 of the North Dakota Century Code is amended and reenacted as follows:

**41-03-66. (3-604) Discharge by cancellation or renunciation.**

1. A person entitled to enforce an instrument may, with or without consideration, discharge the obligation of a party to pay the instrument by an intentional voluntary act such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge or by agreeing not to sue or otherwise renouncing rights against the party by a signed writing record. The obligation of a party to pay a check is not discharged solely by destruction of the check in connection with a process in which information is extracted from the check and an image of the check is made and, subsequently, the information and image are transmitted for payment.
2. Cancellation or striking out of an endorsement under subsection 1 does not affect the status and rights of a party derived from the endorsement.

**SECTION 24. AMENDMENT.** Section 41-04.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**41-04.1-03. (4A-103) Payment order - Definitions.**

1. In this chapter:
  - a. "Beneficiary" means the person to be paid by the beneficiary's bank.
  - b. "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.
  - c. "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, ~~electronically, or in writing~~ or in a record, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:
    - (1) The instruction does not state a condition to payment to the beneficiary other than time of payment.
    - (2) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender.
    - (3) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.
  - d. "Receiving bank" means the bank to which the sender's instruction is addressed.
  - e. "Sender" means the person giving the instruction to the receiving bank.
2. If an instruction complying with subdivision a of subsection 1 is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.
3. A payment order is issued when it is sent to the receiving bank.

**SECTION 25. AMENDMENT.** Section 41-04.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**41-04.1-09. (4A-201) Security procedure.**

"Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of verifying that a payment order or communication amending or canceling a payment order is that of the customer or detecting error in the transmission or the content of the payment order or communication. A security procedure may impose an obligation on the receiving bank or the customer and may require the use of algorithms or other codes, identifying words or numbers, symbols, sounds, biometrics, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer or requiring a payment order to be sent from a known electronic mail address, internet protocol address, or telephone number is not by itself a security procedure.

**SECTION 26. AMENDMENT.** Section 41-04.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**41-04.1-10. (4A-202) Authorized and verified payment orders.**

1. A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.
2. If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified under a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and the bank proves that it accepted the payment order in good faith and in compliance with the bank's obligations under the security procedure and any ~~written~~ agreement or instruction of the customer, evidenced by a record, restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a ~~written~~ agreement with the customer, evidenced by a record, or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.
3. Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and the customer expressly agreed in ~~writing~~ a record to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the bank's obligations under the security procedure chosen by the customer.

4. In this chapter the term "sender" includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection 1 or is effective as the order of the customer under subsection 2.
5. This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.
6. Except as provided in this section and in subdivision a of subsection 1 of section 41-04.1-11, rights and obligations arising under this section or section 41-04.1-11 may not be varied by agreement.

**SECTION 27. AMENDMENT.** Section 41-04.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**41-04.1-11. (4A-203) Unenforceability of certain verified payment orders.**

1. If an accepted payment order is not, under subsection 1 of section 41-04.1-10, an authorized order of a customer identified as sender, but is effective as an order of the customer under subsection 2 of section 41-04.1-10, the following rules apply:
  - a. By express written agreement evidenced by a record, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.
  - b. The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure or by a person who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.
2. This section applies to amendments of payment orders to the same extent it applies to payment orders.

**SECTION 28. AMENDMENT.** Subsection 3 of section 41-04.1-15 of the North Dakota Century Code is amended and reenacted as follows:

3. If a payment order described in subsection 2 is accepted, the originator's payment order described the beneficiary inconsistently by name and number, and the beneficiary's bank pays the person identified by number as permitted by subdivision a of subsection 2, the following rules apply:
  - a. If the originator is a bank, the originator is obliged to pay its order.
  - b. If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account

number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfied the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing record stating the information to which the notice relates.

**SECTION 29. AMENDMENT.** Subdivision b of subsection 2 of section 41-04.1-16 of the North Dakota Century Code is amended and reenacted as follows:

- b. If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subdivision a of subsection 2, as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing record stating the information to which the notice relates.

**SECTION 30. AMENDMENT.** Subsection 1 of section 41-04.1-18 of the North Dakota Century Code is amended and reenacted as follows:

1. A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, ~~electronically~~, or in writing a record. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, any means complying with the agreement is reasonable, and any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

**SECTION 31. AMENDMENT.** Subsection 1 of section 41-04.1-19 of the North Dakota Century Code is amended and reenacted as follows:

1. A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally, ~~electronically~~, or in writing a record. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

**SECTION 32. AMENDMENT.** Section 41-04.1-25 of the North Dakota Century Code is amended and reenacted as follows:

**41-04.1-25. (4A-305) Liability for late or improper execution or failure to execute payment order.**

1. If a funds transfer is completed but execution of a payment order by the receiving bank in breach of section 41-04.1-22 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the

improper execution. Except as provided in subsection 3, additional damages are not recoverable.

2. If execution of a payment order by a receiving bank in breach of section 41-04.1-22 results in noncompletion of the funds transfer, failure to use an intermediary bank designated by the originator, or issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection 1, resulting from the improper execution. Except as provided in subsection 3, additional damages are not recoverable.
3. In addition to the amounts payable under subsections 1 and 2, damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, evidenced by a record.
4. If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, evidenced by a record, but are not otherwise recoverable.
5. Reasonable attorney's fees are recoverable if demand for compensation under subsection 1 or 2 is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection 4 and the agreement does not provide for damages, reasonable attorney's fees are recoverable if demand for compensation under subsection 4 is made and refused before an action is brought on the claim.
6. Except as stated in this section, the liability of a receiving bank under subsections 1 and 2 may not be varied by agreement.

**SECTION 33. AMENDMENT.** Section 41-05-04 of the North Dakota Century Code is amended and reenacted as follows:

**41-05-04. (5-104) Formal requirements.**

A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a signed record and is authenticated:

1. ~~By a signature; or~~
2. ~~In accordance with the agreement of the parties or the standard practice referred to in subsection 5 of section 41-05-08.~~

**SECTION 34. AMENDMENT.** Section 41-05-16 of the North Dakota Century Code is amended and reenacted as follows:

**41-05-16. (5-116) Choice of law and forum.**

1. The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record ~~signed or otherwise authenticated~~ by the affected parties ~~in the manner provided in section 41-05-04~~ or by a provision in the person's letter of

credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

2. Unless subsection 1 applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued.
3. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection 4.
- 3-4. A branch of a bank is considered to be located at the address indicated in the branch's undertaking. If more than one address is indicated, the branch is considered to be located at the address from which the undertaking was issued.
5. Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the uniform customs and practice for documentary credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If:
  - a. This chapter would govern the liability of an issuer, nominated person, or adviser under subsection 1 or 2;
  - b. The relevant undertaking incorporates rules of custom or practice; and
  - c. There is conflict between this chapter and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in subsection 3 of section 41-05-03.
- 4-6. If there is conflict between this chapter and chapter 41-03, 41-04, 41-04.1, or 41-09, this chapter governs.
- 5-7. The forum for settling disputes arising out of an undertaking within this chapter may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection 1.

**SECTION 35. AMENDMENT.** Section 41-07-02 of the North Dakota Century Code is amended and reenacted as follows:

**41-07-02. (7-102) Definitions and index of definitions.**

1. In this chapter, unless the context otherwise requires:
  - a. "Bailee" means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.
  - b. "Carrier" means a person that issues a bill of lading.

- c. "Consignee" means a person named in a bill of lading to which or to whose order the bill promises delivery.
  - d. "Consignor" means a person named in a bill of lading as the person from which the goods have been received for shipment.
  - e. "Delivery order" means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.
  - f. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
  - g. "Goods" means all things that are treated as movable for the purposes of a contract for storage or transportation.
  - h. "Issuer" means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer's instructions.
  - i. "Person entitled under the document" means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a non-negotiable document of title.
  - j. ~~"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.~~
  - k. "Shipper" means a person that enters into a contract of transportation with a carrier.
  - l. ~~"Sign" means, with present intent to authenticate or adopt a record:~~
    - ~~(1) To execute or adopt a tangible symbol; or~~
    - ~~(2) To attach to or logically associate with the record an electronic sound, symbol, or process.~~
  - m-k. "Warehouse" means a person engaged in the business of storing goods for hire.
2. Definitions in other sections applying to this chapter and the sections in which they appear are:
- a. "Contract for sale". Section 41-02-06.
  - b. "Lessee in ordinary course". Section 41-02.1-03.
  - c. "Receipt" of goods. Section 41-02-03.

3. In addition, chapter 41-01 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

**SECTION 36. AMENDMENT.** Section 41-07-06 of the North Dakota Century Code is amended and reenacted as follows:

**41-07-06. (7-106) Control of electronic document of title.**

1. A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.
2. A system satisfies subsection 1, and a person ~~is deemed to have~~has control of an electronic document of title, if the document is created, stored, and ~~assigned~~transferred in such a manner that:
  - a. A single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in subdivisions d, e, and f, unalterable;
  - b. The authoritative copy identifies the person asserting control as:
    - (1) The person to which the document was issued; or
    - (2) If the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;
  - c. The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;
  - d. Copies or amendments that add or change an identified ~~assignee~~transferee of the authoritative copy can be made only with the consent of the person asserting control;
  - e. Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
  - f. Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.
3. A system satisfies subsection 1, and a person has control of an electronic document of title, if an authoritative electronic copy of the document, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded:
  - a. Enables the person readily to identify each electronic copy as either an authoritative copy or a nonauthoritative copy;
  - b. Enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as the person to which each authoritative electronic copy was issued or transferred; and
  - c. Gives the person exclusive power, subject to subsection 4, to:

- (1) Prevent others from adding or changing the person to which each authoritative electronic copy has been issued or transferred; and
  - (2) Transfer control of each authoritative electronic copy.
4. Subject to subsection 5, a power is exclusive under subdivision c of subsection 3, even if:
  - a. The authoritative electronic copy, a record attached to or logically associated with the authoritative electronic copy, or a system in which the authoritative electronic copy is recorded limits the use of the document of title or has a protocol that is programmed to cause a change, including a transfer or loss of control; or
  - b. The power is shared with another person.
5. A power of a person is not shared with another person under subdivision b of subsection 4 and the person's power is not exclusive if:
  - a. The person can exercise the power only if the power also is exercised by the other person; and
  - b. The other person:
    - (1) Can exercise the power without exercise of the power by the person;  
or
    - (2) Is the transferor to the person of an interest in the document of title.
6. If a person has the powers specified in subdivision c of subsection 3, the powers are presumed to be exclusive.
7. A person has control of an electronic document of title if another person, other than the transferor to the person of an interest in the document:
  - a. Has control of the document and acknowledges that it has control on behalf of the person; or
  - b. Obtains control of the document after having acknowledged that it will obtain control of the document on behalf of the person.
8. A person that has control under this section is not required to acknowledge that it has control on behalf of another person.
9. If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this chapter or chapter 41-09 otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to any other person.

**SECTION 37. AMENDMENT.** Section 41-08-02 of the North Dakota Century Code is amended and reenacted as follows:

**41-08-02. (8-102) Definitions.**

1. In this chapter:

- a. "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.
- b. "Bearer form", as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an endorsement.
- c. "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.
- d. "Certificated security" means a security that is represented by a certificate.
- e. "Clearing corporation" means:
  - (1) A person registered as a "clearing agency" under the federal securities laws;
  - (2) A federal reserve bank; or
  - (3) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.
- f. "Communicate" means to:
  - (1) Send a signed writing record; or
  - (2) Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.
- g. "Endorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.
- h. "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of subdivision b or c of subsection 2 of section 41-08-41, that person is the entitlement holder.
- i. "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.
- j. "Financial asset", except as otherwise provided in section 41-08-03, means:
  - (1) A security;

- (2) An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or
- (3) Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this chapter.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

k. ~~Reserved.~~

l. "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

m. ~~l.~~ "Registered form", as applied to a certificated security, means a form in which:

- (1) The security certificate specifies a person entitled to the security; and
- (2) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

n. ~~m.~~ "Securities intermediary" means:

- (1) A clearing corporation; or
- (2) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

o. ~~n.~~ "Security", except as otherwise provided in section 41-08-03, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

- (1) Which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;
- (2) Which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and
- (3) Which:
  - (a) Is, or is of a type, dealt in or traded on securities exchanges or securities markets; or
  - (b) Is a medium for investment and by its terms expressly provides that it is a security governed by this chapter.

- p-o. "Security certificate" means a certificate representing a security.
- q-p. "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in sections 41-08-41 through 41-08-51.
- r-q. "Uncertificated security" means a security that is not represented by a certificate.
2. ~~Other~~The following definitions applying to in this chapter and the sections in which they appear are other chapters apply to this chapter:
- a. "Appropriate person". Section 41-08-07.
  - b. "Control". Section 41-08-06.
  - c. "Controllable account". Section 41-09-02.
  - d. "Controllable electronic record". Section 41-12-02.
  - e. "Controllable payment intangible". Section 41-09-02.
  - f. "Delivery". Section 41-08-24.
- d-g. "Investment company security". Section 41-08-03.
- e-h. "Issuer". Section 41-08-17.
- f.i. "Overissue". Section 41-08-26.
- g-j. "Protected purchaser". Section 41-08-29.
- h-k. "Securities account". Section 41-08-41.
3. In addition, chapter 41-01 contains general definitions and principles of construction and interpretation applicable throughout this chapter.
4. The characterization of a person, business, or transaction for purposes of this chapter does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

**SECTION 38.** A new subsection to section 41-08-03 of the North Dakota Century Code is created and enacted as follows:

A controllable account, controllable electronic record, or controllable payment intangible is not a financial asset unless paragraph 3 of subdivision j of subsection 1 of section 41-08-02 applies.

**SECTION 39. AMENDMENT.** Section 41-08-06 of the North Dakota Century Code is amended and reenacted as follows:

**41-08-06. (8-106) Control.**

1. A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

2. A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser and:
  - a. The certificate is endorsed to the purchaser or in blank by an effective endorsement; or
  - b. The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.
3. A purchaser has "control" of an uncertificated security if:
  - a. The uncertificated security is delivered to the purchaser; or
  - b. The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.
4. A purchaser has "control" of a security entitlement if:
  - a. The purchaser becomes the entitlement holder;
  - b. The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or
  - c. ~~Another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser, other than the transferor to the purchaser of an interest in the security entitlement:~~
    - (1) Has control of the security entitlement and acknowledges that it has control on behalf of the purchaser; or
    - (2) Obtains control of the security entitlement after having acknowledged that it will obtain control of the security entitlement on behalf of the purchaser.
5. If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.
6. A purchaser who has satisfied the requirements of subsection 3 or 4 has control, even if the registered owner in the case of subsection 3 or the entitlement holder in the case of subsection 4 retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.
7. An issuer or a securities intermediary may not enter into an agreement of the kind described in subdivision b of subsection 3 or subdivision b of subsection 4 without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement

is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

8. A person that has control under this section is not required to acknowledge that it has control on behalf of a purchaser.
9. If a person acknowledges that it has or will obtain control on behalf of a purchaser, unless the person otherwise agrees or law other than this chapter or chapter 41-09 otherwise provides, the person does not owe any duty to the purchaser and is not required to confirm the acknowledgment to any other person.

**SECTION 40.** A new subsection to section 41-08-10 of the North Dakota Century Code is created and enacted as follows:

The local law of the issuer's jurisdiction or the securities intermediary's jurisdiction governs a matter or transaction specified in subsection 1 or 2 even if the matter or transaction does not bear any relation to the jurisdiction.

**SECTION 41. AMENDMENT.** Section 41-08-29 of the North Dakota Century Code is amended and reenacted as follows:

**41-08-29. (8-303) Protected purchaser.**

1. "Protected purchaser" means a purchaser of a certificated or uncertificated security, or of an interest therein, who:
  - a. Gives value;
  - b. Does not have notice of any adverse claim to the security; and
  - c. Obtains control of the certificated or uncertificated security.
2. ~~In addition to acquiring the rights of a purchaser, a~~ protected purchaser also acquires its interest in the security free of any adverse claim.

<sup>209</sup> **SECTION 42. AMENDMENT.** Section 41-09-02 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-02. (9-102) Definitions and index of definitions.**

1. In this chapter:
  - a. "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.
  - b. "Account", except as used in "account for", "account statement", "account to", "commodity account" in subdivision p, "customer's account", "deposit account" in subdivision gg, "on account of", and "statement of account", means:
    - (1) A right to payment of a monetary obligation, regardless of whether earned by performance:

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<sup>209</sup> Section 41-09-02 was also amended by section 1 of Senate Bill No. 2392, chapter 372.

- (a) For property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;
  - (b) For services rendered or to be rendered;
  - (c) For a policy of insurance issued or to be issued;
  - (d) For a secondary obligation incurred or to be incurred;
  - (e) For energy provided or to be provided;
  - (f) For the use or hire of a vessel under a charter or other contract;
  - (g) Arising out of the use of a credit or charge card or information contained on or for use with the card; or
  - (h) As winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state.
- (2) The term includes controllable accounts and a health care insurance receivable. The term does not include:
- (a) ~~Right to payment evidenced by chattel~~Chattel paper or ~~an instrument~~;
  - (b) Commercial tort claim;
  - (c) Deposit account;
  - (d) Investment property;
  - (e) Letter-of-credit right or letters of credit;
  - (f) Right to payment for any money or fund advanced or sold, other than a right arising out of the use of a credit or charge card or information contained on or for use with the card; or
  - (g) Certificate of deposit; or
  - (h) Rights to payment evidenced by an instrument.
- c. "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include a person obligated to pay a negotiable instrument, even if the negotiable instrument constitutes part of ~~evidences~~ chattel paper.
- d. "Accounting", except as used in "accounting for", means a record:
- (1) ~~Authenticated~~Signed by a secured party;
  - (2) Indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

- (3) Identifying the components of the obligations in reasonable detail.
- e. "Agricultural lien" means an interest in farm products:
- (1) That secures payment or performance of an obligation for:
    - (a) Goods or services furnished in connection with a debtor's farming operation or in connection with processing, production, or entrustment of the farm products; or
    - (b) Rent on real property leased by a debtor in connection with the debtor's farming operation;
  - (2) That is created by statute in favor of a person that:
    - (a) Furnished goods or services in connection with processing, production, or entrustment of the farm product or in the ordinary course of that person's business furnished goods or services to a debtor in connection with a debtor's farming operation; or
    - (b) Leased real property to a debtor in connection with the debtor's farming operation; and
  - (3) Of which the effectiveness does not depend on the person's possession of the personal property.
- f. "As-extracted collateral" means:
- (1) Oil, gas, or other mineral that is subject to a security interest that:
    - (a) Is created by a debtor having an interest in the mineral before extraction; and
    - (b) Attaches to the mineral as extracted; or
  - (2) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other mineral in which the debtor had an interest before extraction.
- g. "Authenticate" means:
- (1) ~~To sign; or~~
  - (2) ~~With present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.~~
- h. "Assignee", except as used in "assignee for benefit of creditors", means a person in whose favor a security interest that secures an obligation is created or provided for under a security agreement, whether or not the obligation is outstanding or to which an account, chattel paper, payment intangible, or promissory note has been sold. The term includes a person to which a security interest has been transferred by a secured party.
- h. "Assignor" means a person that under a security agreement creates or provides for a security interest that secures an obligation or sells an account, chattel paper, payment intangible, or promissory note. The term

includes a secured party that has transferred a security interest to another person.

- i. "Bank" means an organization engaged in the business of banking. The term includes a savings bank, savings and loan association, credit union, and trust company.
- i.j. "Cash proceeds" means proceeds that are money, checks, deposit accounts, certificates of deposit, or the like.
- j.k. "Certificate of deposit" means a bank record of a sum of money which has been received by the bank and a promise made by the bank to repay the sum of money. The term does not include a deposit account. A certificate of deposit may be negotiable, non-negotiable, nontransferable, certificated, or uncertificated.
- k.l. "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.
- l.m. "Certificated certificate of deposit" means a certificate of deposit that is represented by a certificate.
- m.n. ~~"Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subdivision, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include charters or other contracts involving the use or hire of a vessel or records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper;~~

(1) Means:

- (a) A right to payment of a monetary obligation secured by specific goods, if the right to payment and security agreement are evidenced by a record; or
- (b) A right to payment of a monetary obligation owed by a lessee under a lease agreement with respect to specific goods and a monetary obligation owed by the lessee in connection with the transaction giving rise to the lease, if:

[1] The right to payment and lease agreement are evidenced by a record; and

[2] The predominant purpose of the transaction giving rise to the lease was to give the lessee the right to possession and use of the goods.

(2) Does not include a right to payment arising out of a charter or other contract involving the use or hire of a vessel or a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

n-o. "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

- (1) Proceeds to which a security interest attaches;
- (2) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
- (3) Goods that are the subject of a consignment.

o-p. "Commercial tort claim" means a claim arising in tort with respect to which:

- (1) The claimant is an organization; or
- (2) The claimant is an individual and the claim:
  - (a) Arose in the course of the claimant's business or profession; and
  - (b) Does not include damages arising out of personal injury to or the death of an individual.

p-q. "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

q-r. "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

- (1) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or
- (2) Traded on a foreign commodity board of trade, exchange, or market and is carried on the books of a commodity intermediary for a commodity customer.

r-s. "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on the intermediary's books.

s-t. "Commodity intermediary" means a person that:

- (1) Is registered as a futures commission merchant under federal commodities law; or

- (2) In the ordinary course of the person's business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

t-u. "Communicate" means:

- (1) To send a written or other tangible record;
- (2) To transmit a record by any means agreed upon by the persons sending and receiving the record; or
- (3) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

v-v. "Consignee" means a merchant to which goods are delivered in a consignment.

w-w. "Consignment" means a transaction, regardless of form, in which a person delivers goods to a merchant for the purpose of sale and:

- (1) The merchant:
  - (a) Deals in goods of that kind under a name other than the name of the person making delivery;
  - (b) Is not an auctioneer; and
  - (c) Is not generally known by its creditors to be substantially engaged in selling the goods of others;
- (2) With respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;
- (3) The goods are not consumer goods immediately before delivery; and
- (4) The transaction does not create a security interest that secures an obligation.

w-x. "Consignor" means a person that delivers goods to a consignee in a consignment.

x-y. "Consumer debtor" means a debtor in a consumer transaction.

y-z. "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

z-aa. "Consumer-goods transaction" means a consumer transaction in which:

- (1) An individual incurs an obligation primarily for personal, family, or household purposes; and
- (2) A security interest in consumer goods secures the obligation.

aa-bb. "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

bb-cc. "Consumer transaction" means a transaction in which:

- (1) An individual incurs an obligation primarily for personal, family, or household purposes;
- (2) A security interest secures the obligation; and
- (3) The collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

ee-dd. "Continuation statement" means an amendment of a financing statement which:

- (1) Identifies, by its file number, the initial financing statement to which it relates; and
- (2) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

dd-ee. "Controllable account" means an account evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control under section 41-12-05 of the controllable electronic record.

ff. "Controllable payment intangible" means a payment intangible evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control under section 41-12-05 of the controllable electronic record.

gg. "Debtor" means:

- (1) A person having an interest, other than a security interest or other lien, in the collateral, regardless of whether the person is an obligor;
- (2) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or
- (3) A consignee.

ee-hh. "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or an account evidenced by a certificate of deposit or an instrument.

ff-ii. "Document" means a document of title or a receipt of the type described in subsection 2 of section 41-07-07.

~~gg. "Electronic chattel paper" means chattel paper evidenced by a record consisting of information stored in an electronic medium.~~

hh-jj. "Electronic money" means money in an electronic form.

kk. "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

ii-ll. "Equipment" means goods other than inventory, farm products, or consumer goods.

jj-mm. "Farm products" means goods, other than standing timber, subject to a lien created under chapter 35-17, 35-30, or 35-31, or with respect to which the debtor is engaged in a farming operation and which are:

- (1) Crops grown, growing, or to be grown, including:
  - (a) Crops produced on trees, vines, and bushes; and
  - (b) Aquatic goods produced in aquacultural operations;
- (2) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;
- (3) Supplies used or produced in a farming operation; or
- (4) Products of crops or livestock in their unmanufactured states.

kk-nn. "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

ll-oo. "File number" means the number assigned to an initial financing statement pursuant to subsection 1 of section 41-09-90.

mm-pp. "Filing office" means an office designated in section 41-09-72 as the place to file a financing statement.

nn-qq. "Filing-office rule" means a rule adopted under section 41-09-97.

oo-rr. "Financing statement" means a record composed of an initial financing statement and any filed record relating to the initial financing statement.

pp-ss. "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying subsections 1 and 2 of section 41-09-73. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

qq-tt. "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

rr-uu. "General intangible" means any personal property, including things in action, other than accounts, certificates of deposit, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes controllable electronic records, payment intangibles, and software.

ss. Reserved.

tt-vv. "Goods" means all things that are movable when a security interest attaches.

- (1) The term includes:
  - (a) Fixtures;
  - (b) Standing timber that is to be cut and removed under a conveyance or contract for sale;
  - (c) The unborn young of animals;
  - (d) Crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes; and
  - (e) Manufactured homes.
- (2) The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if:
  - (a) The program is associated with the goods in such a manner that the program is customarily considered part of the goods; or
  - (b) By becoming the owner of the goods, a person acquires a right to use the program in connection with the goods.
- (3) The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, certificates of deposit, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

~~uu-ww.~~ "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

~~vv-xx.~~ "Health care insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health care goods or services provided or to be provided.

~~ww-yy.~~ "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include:

- (1) Certificates of deposit;
- (2) Investment property;
- (3) Letters of credit; or

(4) Writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card; or

(5) Writings that evidence chattel paper.

~~xx-zz.~~ "Inventory" means goods, other than farm products, that:

- (1) Are leased by a person as lessor;
- (2) Are held by a person for sale or lease or to be furnished under a contract of service;
- (3) Are furnished by a person under a contract of service; or
- (4) Consist of raw materials, work in process, or materials used or consumed in a business.

~~yy-aaa.~~ "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

~~zz-bbb.~~ "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

~~aaa-ccc.~~ "Letter-of-credit right" means a right to payment or performance under a letter of credit, regardless of whether the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

~~bbb-ddd.~~ "Lien creditor" means:

- (1) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;
- (2) An assignee for benefit of creditors from the time of assignment;
- (3) A trustee in bankruptcy from the date of the filing of the petition; or
- (4) A receiver in equity from the time of appointment.

~~eee-eee.~~ "Manufactured home" means a structure, transportable in one or more sections, that, in the traveling mode, is eight body feet [2.44 meters] or more in width or forty body feet [12.19 meters] or more in length, or, when erected on site, is three hundred twenty square feet [29.73 square meters] or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this subdivision except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of

housing and urban development and complies with the standards established under title 42 of the United States Code.

~~ddd-fff.~~ "Manufactured-home transaction" means a secured transaction:

- (1) Which creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or
- (2) In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

~~eee-ggg.~~ "Money" has the meaning in subsection 2 of section 41-01-09, but does not include a deposit account or money in an electronic form that cannot be subjected to control under section 41-09-05.1.

~~hhh.~~ "Mortgage" means a consensual interest in real property, including fixtures, that secures payment or performance of an obligation.

~~fff.iii.~~ "New debtor" means a person that becomes bound as debtor under subsection 4 of section 41-09-13 by a security agreement previously entered into by another person.

~~ggg-jjj.~~ "New value" means:

- (1) Money;
- (2) Money's worth in property, services, or new credit; or
- (3) Release by a transferee of an interest in property previously transferred to the transferee.

The term does not include an obligation substituted for another obligation.

~~hhh-kkk.~~ "Noncash proceeds" means proceeds other than cash proceeds.

~~iii.iii.~~ "Non-negotiable certificate of deposit" means a bank record that contains an acknowledgment that a sum of money has been received by the issuer and a promise by the issuer to repay the sum of money other than a deposit account or negotiable instrument.

~~jjj-mmm.~~ "Nontransferable certificate of deposit" means a non-negotiable certificate of deposit which may be transferred only on the books of the issuer, with the consent of the issuer, or subject to other restrictions or considerations of the issuer on transfer. The term does not include a deposit account.

~~kkk-nnn.~~ "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral:

- (1) Owes payment or other performance of the obligation;
- (2) Has provided property other than the collateral to secure payment or other performance of the obligation; or
- (3) Is otherwise accountable in whole or in part for payment or other performance of the obligation.

The term does not include issuers or nominated persons under a letter of credit.

~~##-ooo.~~ "Original debtor", except as used in subsection 3 of section 41-09-30, means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under subsection 4 of section 41-09-13.

~~mmm-ppp.~~ "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation. The term includes a controllable payment intangible.

~~nnn-qqq.~~ "Person related to", with respect to an individual, means:

- (1) The spouse of the individual;
- (2) A brother, brother-in-law, sister, or sister-in-law of the individual;
- (3) An ancestor or lineal descendant of the individual or the individual's spouse; or
- (4) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

~~eee-rrr.~~ "Person related to", with respect to an organization, means:

- (1) A person directly or indirectly controlling, controlled by, or under common control with the organization;
- (2) An officer or director of, or a person performing similar functions with respect to, the organization;
- (3) An officer or director of, or a person performing similar functions with respect to, a person described in paragraph 1;
- (4) The spouse of an individual described in paragraph 1, 2, or 3; or
- (5) An individual who is related by blood or marriage to an individual described in paragraph 1, 2, 3, or 4 and shares the same home with the individual.

~~ppp-sss.~~ "Proceeds", except as used in subsection 2 of section 41-09-106, means the following property:

- (1) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
- (2) Whatever is collected on, or distributed on account of, collateral;
- (3) Rights arising out of collateral;
- (4) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

- (5) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

qqq-ttt. "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

fff-uuu. "Proposal" means a record ~~authenticated~~ signed by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures under sections 41-09-115 through 41-09-117.

sss-vvv. "Public organic record" means a record that is available to the public for inspection and which is:

- (1) A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;
- (2) An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or
- (3) A record consisting of legislation enacted by the legislature of a state or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or United States which amends or restates the name of the organization.

ttt-www. "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, regardless of whether a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from the secured party's obligation.

uuu-xxx. "Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

vvv-yyy. "Registered organization" means an organization formed or organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state.

www-zzz. "Secondary obligor" means an obligor to the extent that:

- (1) The obligor's obligation is secondary; or
- (2) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

~~xxx-aaaa.~~ "Secured party" means:

- (1) A person in whose favor a security interest is created or provided for under a security agreement, regardless of whether any obligation to be secured is outstanding;
- (2) A person that holds an agricultural lien;
- (3) A consignor;
- (4) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;
- (5) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or
- (6) A person that holds a security interest arising under section 41-02-46, section 41-02-53, subsection 3 of section 41-02-90, subsection 5 of section 41-02.1-56, section 41-04-22, or section 41-05-18.

~~yyy-bbbb.~~ "Security agreement" means an agreement that creates or provides for a security interest.

~~zzz.~~ "Send", in connection with a record or notification, means:

- (1) ~~To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or~~
- (2) ~~To cause the record or notification to be received within the time that it would have been received if properly sent under paragraph 1.~~

~~aaaa-cccc.~~ "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

~~bbbb-dddd.~~ "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

~~eeee-eeee.~~ "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

~~dddd.~~ ~~"Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.~~

~~eeee-ffff.~~ "Tangible money" means money in a tangible form.

~~gggg.~~ "Termination statement" means an amendment of a financing statement which:

- (1) Identifies, by the amendment's file number, the initial financing statement to which it relates; and
- (2) Indicates either that the amendment is a termination statement or that the identified financing statement is no longer effective.

~~ffff-hhhh.~~ "Transmitting utility" means a person primarily engaged in the business of:

- (1) Operating a railroad, subway, street railway, or trolley bus;
- (2) Transmitting communications electrically, electromagnetically, or by light;
- (3) Transmitting goods by pipeline or sewer; or
- (4) Transmitting or producing and transmitting electricity, steam, gas, or water.

~~gggg-ijjj.~~ "Uncertificated certificate of deposit" means an obligation of a bank to repay a sum of money that it has received which is not represented by a certificate, but only by an entry on the books of the bank and any documentation given to the customer by the bank. The term does not include a deposit account.

2. "Control" as provided under section 41-07-06 and the following definitions in other chapters apply to this chapter:

- a. "Applicant". Section 41-05-02.
- b. "Beneficiary". Section 41-05-02.
- c. "Broker". Section 41-08-02.
- d. "Certificated security". Section 41-08-02.
- e. "Check". Section 41-03-04.
- f. "Clearing corporation". Section 41-08-02.
- g. "Contract for sale". Section 41-02-06.
- h. "Controllable electronic record". Section 41-12-02.
- i. "Customer". Section 41-04-04.
- i.j. "Entitlement holder". Section 41-08-02.

- j-k. "Financial asset". Section 41-08-02.
- k-l. "Holder in due course". Section 41-03-28.
- l-m. "Issuer" (with respect to a letter of credit or letter-of-credit right). Section 41-05-02.
- m-n. "Issuer" (with respect to a security). Section 41-08-17.
- n-o. "Issuer" (with respect to documents of title). Section 41-07-02.
- o-p. "Lease". Section 41-02.1-03.
- p-q. "Lease agreement". Section 41-02.1-03.
- q-r. "Lease contract". Section 41-02.1-03.
- r-s. "Leasehold interest". Section 41-02.1-03.
- s-t. "Lessee". Section 41-02.1-03.
- t-u. "Lessee in ordinary course of business". Section 41-02.1-03.
- u-v. "Lessor". Section 41-02.1-03.
- v-w. "Lessor's residual interest". Section 41-02.1-03.
- w-x. "Letter of credit". Section 41-05-02.
- x-y. "Merchant". Section 41-02-04.
- y-z. "Negotiable instrument". Section 41-03-04.
- z-aa. "Nominated person". Section 41-05-02.
- aa-bb. "Note". Section 41-03-04.
- bb-cc. "Proceeds of a letter of credit". Section 41-05-14.
- ee-dd. "Protected purchaser". Section 41-08-29.
- ee. "Prove". Section 41-03-03.
- dd-ff. "Qualifying purchaser". Section 41-12-02.
- gg. "Sale". Section 41-02-06.
- ee-hh. "Securities account". Section 41-08-41.
- ff-ii. "Securities intermediary". Section 41-08-02.
- gg-ii. "Security". Section 41-08-02.
- hh-kk. "Security certificate". Section 41-08-02.
- ii-ll. "Security entitlement". Section 41-08-02.

~~jj-mm.~~ "Uncertificated security". Section 41-08-02.

3. Chapter 41-01 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

**SECTION 43. AMENDMENT.** Section 41-09-04 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-04. (9-104) Control of deposit account or uncertificated certificate of deposit.**

1. A secured party has control of a deposit account or uncertificated certificate of deposit if:
  - a. The secured party is the bank with which the deposit account or uncertificated certificate of deposit is maintained;
  - b. The debtor, secured party, and bank have agreed in ~~an authenticated~~ signed record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account or uncertificated certificate of deposit without further consent by the debtor; or
  - c. The secured party becomes the bank's customer with respect to the deposit account or uncertificated certificate of deposit; or
  - d. Another person, other than the debtor:
    - (1) Has control of the deposit account and acknowledges that it has control on behalf of the secured party; or
    - (2) Obtains control of the deposit account after having acknowledged that it will obtain control of the deposit account on behalf of the secured party.
2. A secured party that has satisfied subsection 1 has control, even if the debtor retains the right to direct the disposition of funds from the deposit account or uncertificated certificate of deposit.

**SECTION 44. AMENDMENT.** Section 41-09-05 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-05. (9-105) Control of electronic copy of record evidencing chattel paper.**

1. ~~A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned~~ A purchaser has control of an authoritative electronic copy of a record evidencing chattel paper if a system employed for evidencing the assignment of interests in the chattel paper reliably establishes the purchaser as the person to which the authoritative electronic copy was assigned.
2. A system satisfies subsection 1, ~~and a secured party has control of electronic chattel paper,~~ if the record or records ~~comprising~~ evidencing the chattel paper are created, stored, and assigned in such a manner that:

- a. A single authoritative copy of the record or records exists which is unique, identifiable, and, except as otherwise provided in subdivisions d, e, and f, unalterable;
  - b. The authoritative copy identifies the ~~secured party~~purchaser as the assignee of the record or records;
  - c. The authoritative copy is communicated to and maintained by the ~~secured party~~purchaser or the ~~secured party's~~sits designated custodian;
  - d. Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the ~~secured party~~purchaser;
  - e. Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
  - f. Any amendment of the authoritative copy is readily identifiable as an ~~authorized or unauthorized revision~~.
3. A system satisfies subsection 1, and a purchaser has control of an authoritative electronic copy of a record evidencing chattel paper, if the electronic copy, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded:
- a. Enables the purchaser readily to identify each electronic copy as either an authoritative copy or a nonauthoritative copy;
  - b. Enables the purchaser readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as the assignee of the authoritative electronic copy; and
  - c. Gives the purchaser exclusive power, subject to subsection 4, to:
    - (1) Prevent others from adding or changing an identified assignee of the authoritative electronic copy; and
    - (2) Transfer control of the authoritative electronic copy.
4. Subject to subsection 5, a power is exclusive under subdivision c of subsection 3 even if:
- a. The authoritative electronic copy, a record attached to or logically associated with the authoritative electronic copy, or a system in which the authoritative electronic copy is recorded limits the use of the authoritative electronic copy or has a protocol programmed to cause a change, including a transfer or loss of control; or
  - b. The power is shared with another person.
5. A power of a purchaser is not shared with another person under subdivision b of subsection 4 and the purchaser's power is not exclusive if:
- a. The purchaser can exercise the power only if the power also is exercised by the other person; and

- b. The other person:
  - (1) Can exercise the power without exercise of the power by the purchaser; or
  - (2) Is the transferor to the purchaser of an interest in the chattel paper.
- 6. If a purchaser has the powers specified in subdivision c of subsection 3, the powers are presumed to be exclusive.
- 7. A purchaser has control of an authoritative electronic copy of a record evidencing chattel paper if another person, other than the transferor to the purchaser of an interest in the chattel paper:
  - a. Has control of the authoritative electronic copy and acknowledges that it has control on behalf of the purchaser; or
  - b. Obtains control of the authoritative electronic copy after having acknowledged that it will obtain control of the electronic copy on behalf of the purchaser.

**SECTION 45.** Section 41-09-05.1 of the North Dakota Century Code is created and enacted as follows:

**41-09-05.1. (9-105A) Control of electronic money.**

- 1. A person has control of electronic money if:
  - a. The electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded gives the person:
    - (1) Power to avail itself of substantially all the benefit from the electronic money; and
    - (2) Exclusive power, subject to subsection 2, to:
      - (a) Prevent others from availing themselves of substantially all the benefit from the electronic money; and
      - (b) Transfer control of the electronic money to another person or cause another person to obtain control of other electronic money as a result of the transfer of the electronic money; and
  - b. The electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers under subdivision a.
- 2. Subject to subsection 3, a power is exclusive under paragraph 2 of subdivision a of subsection 1 even if:
  - a. The electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded

- limits the use of the electronic money or has a protocol programmed to cause a change, including a transfer or loss of control; or
- b. The power is shared with another person.
3. A power of a person is not shared with another person under subdivision b of subsection 2 and the person's power is not exclusive if:
- a. The person can exercise the power only if the power also is exercised by the other person; and
- b. The other person:
- (1) Can exercise the power without exercise of the power by the person; or
- (2) Is the transferor to the person of an interest in the electronic money.
4. If a person has the powers specified in paragraph 2 of subdivision a of subsection 1, the powers are presumed to be exclusive.
5. A person has control of electronic money if another person, other than the transferor to the person of an interest in the electronic money:
- a. Has control of the electronic money and acknowledges that it has control on behalf of the person; or
- b. Obtains control of the electronic money after having acknowledged that it will obtain control of the electronic money on behalf of the person.

**SECTION 46.** Section 41-09-07.1 of the North Dakota Century Code is created and enacted as follows:

**41-09-07.1. (9-107A) Control of controllable electronic record, controllable account, or controllable payment intangible.**

1. A secured party has control of a controllable electronic record as provided in section 41-12-05.
2. A secured party has control of a controllable account or controllable payment intangible if the secured party has control of the controllable electronic record that evidences the controllable account or controllable payment intangible.

**SECTION 47.** Section 41-09-07.2 of the North Dakota Century Code is created and enacted as follows:

**41-09-07.2. (9-107B) No requirement to acknowledge or confirm - No duties.**

1. A person that has control under section 41-09-04, 41-09-05, or 41-09-05.1 is not required to acknowledge that it has control on behalf of another person.
2. If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this chapter otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to any other person.

**SECTION 48. AMENDMENT.** Subsection 2 of section 41-09-13 of the North Dakota Century Code is amended and reenacted as follows:

2. Except as otherwise provided in subsections 3 through 9, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:
  - a. Value has been given;
  - b. The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
  - c. One of the following conditions is met:
    - (1) The debtor has ~~authenticated~~signed a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
    - (2) The collateral is not a certificated security and is in the possession of the secured party under section 41-09-33 pursuant to the debtor's security agreement;
    - (3) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under section 41-08-27 pursuant to the debtor's security agreement; ~~or~~
    - (4) The collateral is controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic chattel paper documents, electronic money, investment property, letter-of-credit rights, electronic documents, or uncertificated certificates of deposit, and the secured party has control under section 41-07-06, 41-09-04, 41-09-05, 41-09-05.1, 41-09-06, or 41-09-07, or 41-09-07.1 pursuant to the debtor's security agreement; or
    - (5) The collateral is chattel paper and the secured party has possession and control under section 41-09-34.1 pursuant to the debtor's security agreement.

**SECTION 49. AMENDMENT.** Section 41-09-14 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-14. (9-204) After-acquired property - Future advances.**

1. Except as otherwise provided in subsection 2, a security agreement may create or provide for a security interest in after-acquired collateral.
2. ~~Subject to subsection 4, a~~ security interest does not attach under a term constituting an after-acquired property clause to:
  - a. Consumer goods, other than an accession if given as additional security, unless the debtor acquires rights in the consumer goods within ten days after the secured party gives value; or
  - b. A commercial tort claim.

3. A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, regardless of whether the advances or value is given pursuant to commitment.
4. Subsection 2 does not prevent a security interest from attaching:
  - a. To consumer goods as proceeds under subsection 1 of section 41-09-35 or commingled goods under subsection 3 of section 41-09-56;
  - b. To a commercial tort claim as proceeds under subsection 1 of section 41-09-35; or
  - c. Under an after-acquired property clause to property that is proceeds of consumer goods or a commercial tort claim.

**SECTION 50. AMENDMENT.** Subsection 3 of section 41-09-17 of the North Dakota Century Code is amended and reenacted as follows:

3. Except as otherwise provided in subsection 4, a secured party having possession of collateral or control of collateral under section 41-07-06, 41-09-04, 41-09-05, 41-09-5.1, 41-09-06, ~~or 41-09-07, or 41-09-07.1~~:
  - a. May hold as additional security any proceeds, except money or funds, received from the collateral;
  - b. Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and
  - c. May create a security interest in the collateral.

**SECTION 51. AMENDMENT.** Section 41-09-18 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-18. (9-208) Additional duties of secured party having control of collateral.**

1. This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.
2. Within ten days after receiving ~~an authenticated~~ a signed demand by the debtor:
  - a. A secured party having control of a deposit account or an uncertificated certificate of deposit under subdivision b of subsection 1 of section 41-09-04 shall send to the bank with which the deposit account or uncertificated certificate of deposit is maintained ~~an authenticated statement~~ a signed record that releases the bank from any further obligation to comply with instructions originated by the secured party;
  - b. A secured party having control of a deposit account or an uncertificated certificate of deposit under subdivision c of subsection 1 of section 41-09-04 shall:

- (1) Pay the debtor the balance on deposit in the deposit account or uncertificated certificate of deposit; or
  - (2) Transfer the balance on deposit into a deposit account or an uncertificated certificate of deposit in the debtor's name;
- c. A secured party, other than a buyer, having control of ~~electronic chattel paper~~ under section 41-09-05 of an authoritative electronic copy of a record evidencing chattel paper shall:
- (1) ~~Communicate the authoritative copy of the electronic chattel paper to the debtor or the electronic chattel paper's designated custodian;~~
  - (2) ~~If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and~~
  - (3) ~~Take appropriate action to enable the debtor or the debtor's designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party transfer control of the electronic copy to the debtor or a person designated by the debtor;~~
- d. A secured party having control of investment property under subdivision b of subsection 4 of section 41-08-06 or subsection 2 of section 41-09-06 shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated a signed record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;
- e. A secured party having control of a letter-of-credit right under section 41-09-07 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated a signed release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and
- f. A secured party having control under section 41-07-06 of an authoritative electronic copy of an electronic document of title shall:
- (1) ~~Give control of the electronic document to the debtor or its designated custodian;~~
  - (2) ~~If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and~~

- ~~(3) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party transfer control of the electronic copy to the debtor or a person designated by the debtor;~~
- g. A secured party having control under section 41-09-05.1 of electronic money shall transfer control of the electronic money to the debtor or a person designated by the debtor; and
- h. A secured party having control under section 41-12-05 of a controllable electronic record, other than a buyer of a controllable account or controllable payment intangible evidenced by the controllable electronic record, shall transfer control of the controllable electronic record to the debtor or a person designated by the debtor.

**SECTION 52. AMENDMENT.** Section 41-09-19 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-19. (9-209) Duties of secured party if account debtor has been notified of assignment.**

1. Except as otherwise provided in subsection 3, this section applies if:
  - a. There is no outstanding secured obligation; and
  - b. The secured party is not committed to make advances, incur obligations, or otherwise give value.
2. Within ten days after receiving ~~an authenticated~~ a signed demand by the debtor, a secured party shall send to an account debtor that has received notification under subsection 1 of section 41-09-68 or subsection 2 of section ~~41-12-06~~ of an assignment to the secured party as assignee under subsection 1 of section 41-09-68 an authenticated a signed record that releases the account debtor from any further obligation to the secured party.
3. This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

**SECTION 53. AMENDMENT.** Section 41-09-20 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-20. (9-210) Request for accounting - Request regarding list of collateral or statement of account.**

1. In this section:
  - a. "Request" means a record of a type described in subdivision b, c, or d.
  - b. "Request for an accounting" means a record ~~authenticated~~ signed by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.
  - c. "Request regarding a list of collateral" means a record ~~authenticated~~ signed by a debtor requesting that the recipient approve or

correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

- d. "Request regarding a statement of account" means a record ~~authenticated~~signed by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.
2. Subject to subsections 3 through 6, a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within fourteen days after receipt:
    - a. In the case of a request for an accounting, by ~~authenticating~~signing and sending to the debtor an accounting; and
    - b. In the case of a request regarding a list of collateral or a request regarding a statement of account, by ~~authenticating~~signing and sending to the debtor an approval or correction.
  3. A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an ~~authenticated~~signed record, including a statement to that effect within fourteen days after receipt.
  4. A person that receives a request regarding a list of collateral, claims no interest in the collateral when that person receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor an ~~authenticated~~signed record:
    - a. Disclaiming any interest in the collateral; and
    - b. If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.
  5. A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor an ~~authenticated~~signed record:
    - a. Disclaiming any interest in the obligations; and
    - b. If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.
  6. A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding twenty-five dollars for each additional response.

**SECTION 54. AMENDMENT.** Section 41-09-21 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-21. (9-301) Law governing perfection and priority of security interests.**

Except as otherwise provided in sections 41-09-23 through ~~41-09-26~~41-09-26.2, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

1. Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.
2. While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.
3. Except as otherwise provided in subsection 4, while ~~tangible negotiable~~ tangible documents, goods, instruments, ~~or tangible money, or tangible chattel paper~~ is located in a jurisdiction, the local law of that jurisdiction governs:
  - a. Perfection of a security interest in the goods by filing a fixture filing;
  - b. Perfection of a security interest in timber to be cut; and
  - c. The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.
4. The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

**SECTION 55. AMENDMENT.** Subsection 1 of section 41-09-24 of the North Dakota Century Code is amended and reenacted as follows:

1. The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account or certificate of deposit maintained with that bank even if the transaction does not bear any relation to the bank's jurisdiction.

**SECTION 56. AMENDMENT.** Subsection 1 of section 41-09-25 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in subsection 3, the following rules apply:
  - a. While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.
  - b. The local law of the issuer's jurisdiction as specified in subsection 4 of section 41-08-10 governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.
  - c. The local law of the securities intermediary's jurisdiction as specified in subsection 5 of section 41-08-10 governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

- d. The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.
- e. Subdivisions b, c, and d apply even if the transaction does not bear any relation to the jurisdiction.

**SECTION 57.** Section 41-09-26.1 of the North Dakota Century Code is created and enacted as follows:

**41-09-26.1. (9-306A) Law governing perfection and priority of security interests in chattel paper.**

1. Except as provided in subsection 4, if chattel paper is evidenced only by an authoritative electronic copy of the chattel paper or is evidenced by an authoritative electronic copy and an authoritative tangible copy, the local law of the chattel paper's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the chattel paper, even if the transaction does not bear any relation to the chattel paper's jurisdiction.
2. The following rules determine the chattel paper's jurisdiction under this section:
  - a. If the authoritative electronic copy of the record evidencing chattel paper, or a record attached to or logically associated with the electronic copy and readily available for review, expressly provides that a particular jurisdiction is the chattel paper's jurisdiction for purposes of this section, this chapter, or this title, that jurisdiction is the chattel paper's jurisdiction.
  - b. If subdivision a does not apply and the rules of the system in which the authoritative electronic copy is recorded are readily available for review and expressly provide that a particular jurisdiction is the chattel paper's jurisdiction for purposes of this section, this chapter, or this title, that jurisdiction is the chattel paper's jurisdiction.
  - c. If subdivisions a and b do not apply and the authoritative electronic copy, or a record attached to or logically associated with the electronic copy and readily available for review, expressly provides that the chattel paper is governed by the law of a particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction.
  - d. If subdivisions a, b, and c do not apply and the rules of the system in which the authoritative electronic copy is recorded are readily available for review and expressly provide that the chattel paper or the system is governed by the law of a particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction.
  - e. If subdivisions a, b, c, and d do not apply, the chattel paper's jurisdiction is the jurisdiction in which the debtor is located.
3. If an authoritative tangible copy of a record evidences chattel paper and the chattel paper is not evidenced by an authoritative electronic copy, while the authoritative tangible copy of the record evidencing chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

- a. Perfection of a security interest in the chattel paper by possession under section 41-09-34.1; and
  - b. The effect of perfection or nonperfection and the priority of a security interest in the chattel paper.
4. The local law of the jurisdiction in which the debtor is located governs perfection of a security interest in chattel paper by filing.

**SECTION 58.** Section 41-09-26.2 of the North Dakota Century Code is created and enacted as follows:

**41-09-26.2. (9-306B) Law governing perfection and priority of security interests in controllable accounts, controllable electronic records, and controllable payment intangibles.**

1. Except as provided in subsection 2, the local law of the controllable electronic record's jurisdiction specified in subsections 3 and 4 of section 41-12-07 governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a controllable electronic record and a security interest in a controllable account or controllable payment intangible evidenced by the controllable electronic record.
2. The local law of the jurisdiction in which the debtor is located governs:
  - a. Perfection of a security interest in a controllable account, controllable electronic record, or controllable payment intangible by filing; and
  - b. Automatic perfection of a security interest in a controllable payment intangible created by a sale of the controllable payment intangible.

**SECTION 59. AMENDMENT.** Section 41-09-30 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-30. (9-310) When filing required to perfect security interest or agricultural lien - Security interests and agricultural liens to which filing provisions do not apply.**

1. Except as otherwise provided in subsection 2 and subsection 2 of section 41-09-32, a financing statement must be filed to perfect all security interests and agricultural liens.
2. The filing of a financing statement is not necessary to perfect a security interest:
  - a. That is perfected under subsection 4, 5, 6, or 7 of section 41-09-28;
  - b. That is perfected under section 41-09-29 when it attaches;
  - c. In property subject to a statute, regulation, or treaty described in subsection 1 of section 41-09-31;
  - d. In goods in possession of a bailee which is perfected under subdivision a or b of subsection 4 of section 41-09-32;

- e. In certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under subsection 5, 6, or 7 of section 41-09-32;
  - f. In collateral in the secured party's possession under section 41-09-33;
  - g. In a certificated security which is perfected by delivery of the security certificate to the secured party under section 41-09-33;
  - h. In controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, ~~electronic chattel paper~~, electronic documents, investment property, letter-of-credit rights, or uncertificated certificates of deposit, which is perfected by control under section 41-09-34;
  - i. In chattel paper which is perfected by possession and control under section 41-09-34.1;
  - j. In proceeds which is perfected under section 41-09-35;
  - ~~j-k.~~ That is perfected under section 41-09-36; or
  - ~~k-l.~~ In agricultural liens created by chapter 35-17, 35-30, or 35-31.
3. If a secured party assigns a perfected security interest or agricultural lien, a filing under this chapter is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

**SECTION 60. AMENDMENT.** Section 41-09-32 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-32. (9-312) Perfection of security interests in chattel paper, controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, money, and uncertificated certificates of deposit - Perfection by permissive filing - Temporary perfection without filing or transfer of possession.**

- 1. A security interest in chattel paper, ~~negotiable documents~~controllable accounts, controllable electronic records, controllable payment intangibles, instruments, ~~or investment property, or negotiable documents~~ may be perfected by filing.
- 2. Except as otherwise provided in subsections 3 and 4 of section 41-09-35 for proceeds:
  - a. A security interest in a deposit account or an uncertificated certificate of deposit may be perfected only by control under section 41-09-34;
  - b. Except as otherwise provided in subsection 4 of section 41-09-28, a security interest in a letter-of-credit right may be perfected only by control under section 41-09-34; ~~and~~
  - c. A security interest in tangible money or a certificated certificate of deposit may be perfected only by the secured party's taking possession under section 41-09-33; and

- d. A security interest in electronic money may be perfected only by control under section 41-09-34.
3. While goods are in the possession of a bailee that has issued a negotiable document covering the goods:
    - a. A security interest in the goods may be perfected by perfecting a security interest in the document; and
    - b. A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.
  4. While goods are in the possession of a bailee that has issued a non-negotiable document covering the goods, a security interest in the goods may be perfected by:
    - a. Issuance of a document in the name of the secured party;
    - b. The bailee's receipt of notification of the secured party's interest; or
    - c. Filing as to the goods.
  5. A security interest in certificated certificates of deposit, certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated a signed security agreement.
  6. A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:
    - a. Ultimate sale or exchange; or
    - b. Loading, unloading, storing, shipping, trans-shipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.
  7. A perfected security interest in a certificated certificate of deposit, certificated security, or instrument remains perfected for twenty days without filing if the secured party delivers the security certificate, certificated certificate of deposit, or instrument to the debtor for the purpose of:
    - a. Ultimate sale or exchange; or
    - b. Presentation, collection, enforcement, renewal, or registration of transfer.
  8. After the twenty-day period specified in subsection 5, 6, or 7 expires, perfection depends upon compliance with this chapter.

**SECTION 61. AMENDMENT.** Section 41-09-33 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-33. (9-313) When possession by or delivery to secured party perfects security interest without filing.**

1. Except as otherwise provided in subsection 2, a secured party may perfect a security interest in ~~tangible~~ certificated certificates of deposit, ~~negotiable documents,~~ goods, instruments, ~~negotiable tangible documents, or tangible money, or tangible chattel paper~~ by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under section 41-08-27.
2. With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in subsection 4 of section 41-09-36.
3. With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:
  - a. The person in possession ~~authenticates~~ signs a record acknowledging that it holds possession of the collateral for the secured party's benefit; or
  - b. The person takes possession of the collateral after having ~~authenticated~~ signed a record acknowledging that it will hold possession of the collateral for the secured party's benefit.
4. If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs ~~not~~ not earlier than the time the secured party takes possession and continues only while the secured party retains possession.
5. A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under section 41-08-27 and remains perfected by delivery until the debtor obtains possession of the security certificate.
6. A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.
7. If a person acknowledges that it holds possession for the secured party's benefit:
  - a. The acknowledgment is effective under subsection 3 or subsection 1 of section 41-09-21, even if the acknowledgment violates the rights of a debtor; and
  - b. Unless the person otherwise agrees or law other than this chapter otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.
8. A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's

business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

- a. To hold possession of the collateral for the secured party's benefit; or
  - b. To redeliver the collateral to the secured party.
9. A secured party does not relinquish possession, even if a delivery under subsection 8 violates the rights of a debtor. A person to which collateral is delivered under subsection 8 does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this chapter otherwise provides.

**SECTION 62. AMENDMENT.** Section 41-09-34 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-34. (9-314) Perfection by control.**

1. A security interest in ~~investment property, controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, uncertificated certificates of deposit, letter-of-credit rights, electronic chattel paper, or~~ electronic documents, ~~electronic money, investment property, or letter-of-credit rights~~ may be perfected by control of the collateral under section 41-07-06, 41-09-04, ~~41-09-05~~41-09-05.1, 41-09-06, or 41-09-07, or 41-09-07.1.
2. A security interest in ~~controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic chattel paper, letter-of-credit rights,~~ electronic documents, or uncertificated certificates of deposit, ~~electronic money, or letter-of-credit rights~~ is perfected by control under section 41-07-06, 41-09-04, ~~41-09-05, or~~41-09-05.1, 41-09-07 ~~when, or~~ 41-09-07.1 ~~not earlier than the time the secured party obtains control and remains perfected by control only while the secured party retains control.~~
3. A security interest in investment property is perfected by control under section 41-09-06 ~~from not earlier than~~ the time the secured party obtains control and remains perfected by control until:
  - a. The secured party does not have control; and
  - b. One of the following occurs:
    - (1) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;
    - (2) If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or
    - (3) If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

**SECTION 63.** Section 41-09-34.1 of the North Dakota Century Code is created and enacted as follows:

**41-09-34.1. (9-314A) Perfection by possession and control of chattel paper.**

1. A secured party may perfect a security interest in chattel paper by taking possession of each authoritative tangible copy of the record evidencing the chattel paper and obtaining control of each authoritative electronic copy of the electronic record evidencing the chattel paper.
2. A security interest is perfected under subsection 1 not earlier than the time the secured party takes possession and obtains control and remains perfected under subsection 1 only while the secured party retains possession and control.
3. Subsections 3 and 6 through 9 of section 41-09-33 applies to perfection by possession of an authoritative tangible copy of a record evidencing chattel paper.

**SECTION 64. AMENDMENT.** Section 41-09-36 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-36. (9-316) Effect of change in governing law.**

1. A security interest perfected pursuant to the law of the jurisdiction designated in subsection 1 of section 41-09-21 or, subsection 3 of section 41-09-25, subsection 4 of section 41-09-26.1, or subsection 2 of section 41-09-26.2 remains perfected until the earliest of:
  - a. The time perfection would have ceased under the law of that jurisdiction;
  - b. The expiration of four months after a change of the debtor's location to another jurisdiction; or
  - c. The expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.
2. If a security interest described in subsection 1 becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.
3. A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:
  - a. The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;
  - b. Thereafter the collateral is brought into another jurisdiction; and
  - c. Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.
4. Except as otherwise provided in subsection 5, a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have

become unperfected under the law of the other jurisdiction had the goods not become so covered.

5. A security interest described in subsection 4 becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under subsection 2 of section 41-09-31 or section 41-09-33 are not satisfied before the earlier of:
  - a. The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or
  - b. The expiration of four months after the goods had become so covered.
6. A security interest in chattel paper, controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, certificates of deposit, letter-of-credit rights, or investment property which is perfected under the law of the chattel paper's jurisdiction, the controllable electronic record's jurisdiction, the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:
  - a. The time the security interest would have become unperfected under the law of that jurisdiction; or
  - b. The expiration of four months after a change of the applicable jurisdiction to another jurisdiction.
7. If a security interest described in subsection 6 becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.
8. The following rules apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction:
  - a. A financing statement filed before the change pursuant to the law of the jurisdiction designated in subsection 1 of section 41-09-21 or subsection 3 of section 41-09-25 is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral if the debtor had not changed its location.
  - b. If a security interest that is perfected by a financing statement that is effective under subdivision a becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in subsection 1 of section 41-09-21 or subsection 3 of section 41-09-25 or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is

deemed never to have been perfected as against a purchaser of the collateral for value.

9. If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in subsection 1 of section 41-09-21 or subsection 3 of section 41-09-25 and the new debtor is located in another jurisdiction, the following rules apply:
  - a. The financing statement is effective to perfect a security interest in collateral in which the new debtor has or acquires rights before or within four months after the new debtor becomes bound under subsection 4 of section 41-09-13, if the financing statement would have been effective to perfect a security interest in the collateral if the collateral had been acquired by the original debtor.
  - b. A security interest that is perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the expiration of the four-month period or the time the financing statement would have become ineffective under the law of the jurisdiction designated in subsection 1 of section 41-09-21 or subsection 3 of section 41-09-25 remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

**SECTION 65. AMENDMENT.** Section 41-09-37 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-37. (9-317) Interests that take priority over or take free of security interest or agricultural lien.**

1. A security interest or an agricultural lien is subordinate to the rights of:
  - a. A person entitled to priority under section 41-09-42; and
  - b. Except as otherwise provided in subsection 5, a person that becomes a lien creditor before the earlier of the time:
    - (1) The security interest or agricultural lien is perfected; or
    - (2) One of the conditions specified in subdivision c of subsection 2 of section 41-09-13 is met and a financing statement covering the collateral is filed.
2. Except as otherwise provided in subsection 5, a buyer, other than a secured party, of ~~tangible chattel paper, tangible documents,~~ goods, instruments, tangible documents, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.
3. Except as otherwise provided in subsection 5, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

4. ~~Subject to subsections 6 through 9, a licensee of a general intangible or a buyer, other than a secured party, of collateral other than tangible chattel paper, tangible documents, electronic money, goods, instruments, tangible documents, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.~~
5. Except as otherwise provided in sections 41-09-40 and 41-09-41, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.
6. A buyer, other than a secured party, of chattel paper takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and:
  - a. Receives delivery of each authoritative tangible copy of the record evidencing the chattel paper; and
  - b. If each authoritative electronic copy of the record evidencing the chattel paper can be subjected to control under section 41-09-05, obtains control of each authoritative electronic copy.
7. A buyer of an electronic document takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and, if each authoritative electronic copy of the document can be subjected to control under section 41-07-06, obtains control of each authoritative electronic copy.
8. A buyer of a controllable electronic record takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and obtains control of the controllable electronic record.
9. A buyer, other than a secured party, of a controllable account or a controllable payment intangible takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and obtains control of the controllable account or controllable payment intangible.

**SECTION 66. AMENDMENT.** Section 41-09-43 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-43. (9-323) Future advances.**

1. Except as otherwise provided in subsection 3, for purposes of determining the priority of a perfected security interest under subdivision a of subsection 1 of section 41-09-42, perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:
  - a. Is made while the security interest is perfected only:
    - (1) Under section 41-09-29 when it attaches; or
    - (2) Temporarily under subsection 5, 6, or 7 of section 41-09-32; and

- b. Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under section 41-09-29 or subsection 5, 6, or 7 of section 41-09-32.
2. Except as otherwise provided in subsection 3, a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than forty-five days after the person becomes a lien creditor unless the advance is made:
  - a. Without knowledge of the lien; or
  - b. Pursuant to a commitment entered into without knowledge of the lien.
3. Subsections 1 and 2 do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.
4. Except as otherwise provided in subsection 5, a buyer of goods ~~other than a buyer in ordinary course of business~~ takes free of a security interest to the extent that it secures advances made after the earlier of:
  - a. The time the secured party acquires knowledge of the buyer's purchase; or
  - b. Forty-five days after the purchase.
5. Subsection 4 does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the forty-five-day period.
6. Except as otherwise provided in subsection 7, a lessee of goods, ~~other than a lessee in ordinary course of business~~, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:
  - a. The time the secured party acquires knowledge of the lease; or
  - b. Forty-five days after the lease contract becomes enforceable.
7. Subsection 6 does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five-day period.

**SECTION 67. AMENDMENT.** Section 41-09-44 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-44. (9-324) Priority of purchase-money security interests.**

1. Except as otherwise provided in subsection 7, a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in section 41-09-47, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within twenty days thereafter.

2. Subject to subsection 3 and except as otherwise provided in subsection 7, a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in section 41-09-50, and, except as otherwise provided in section 41-09-47, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:
  - a. The purchase-money security interest is perfected when the debtor receives possession of the inventory;
  - b. The purchase-money secured party sends ~~an authenticated~~ a signed notification to the holder of the conflicting security interest;
  - c. The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and
  - d. The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.
3. Subdivisions b through d of subsection 2 apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:
  - a. If the purchase-money security interest is perfected by filing, before the date of the filing; or
  - b. If the purchase-money security interest is temporarily perfected without filing or possession under subsection 6 of section 41-09-32, before the beginning of the twenty-day period thereunder.
4. Subject to subsection 5 and except as otherwise provided in subsection 7, a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in section 41-09-47, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:
  - a. The purchase-money security interest is perfected when the debtor receives possession of the livestock;
  - b. The purchase-money secured party sends ~~an authenticated~~ a signed notification to the holder of the conflicting security interest;
  - c. The holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and
  - d. The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

5. Subdivisions b through d of subsection 4 apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:
  - a. If the purchase-money security interest is perfected by filing, before the date of the filing; or
  - b. If the purchase-money security interest is temporarily perfected without filing or possession under subsection 6 of section 41-09-32, before the beginning of the twenty-day period thereunder.
6. Except as otherwise provided in subsection 7, a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in section 41-09-47, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.
7. If more than one security interest qualifies for priority in the same collateral under subsection 1, 2, 3, or 4:
  - a. A security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and
  - b. In all other cases, subsection 1 of section 41-09-42 applies to the qualifying security interests.

**SECTION 68.** Section 41-09-46.1 of the North Dakota Century Code is created and enacted as follows:

**41-09-46.1. (9-326A) Priority of security interest in controllable account, controllable electronic record, and controllable payment intangible.**

A security interest in a controllable account, controllable electronic record, or controllable payment intangible held by a secured party having control of the account, electronic record, or payment intangible has priority over a conflicting security interest held by a secured party that does not have control.

**SECTION 69. AMENDMENT.** Section 41-09-50 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-50. (9-330) Priority of purchaser of chattel paper or instrument.**

1. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:
  - a. In good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and, takes possession of each authoritative tangible copy of the record evidencing the chattel paper ~~or, and obtains control of~~ under section 41-09-05 of each authoritative electronic copy of the record evidencing the chattel paper ~~under section 41-09-05; and~~

- ~~b. The chattel paper does not~~ authoritative copies of the record evidencing the chattel paper do not indicate that it ~~the chattel paper~~ has been assigned to an identified assignee other than the purchaser.
2. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value ~~and~~ takes possession of each authoritative tangible copy of the record evidencing the chattel paper or, and obtains control of ~~under section 41-09-05 of each authoritative electronic copy of the record evidencing the chattel paper under section 41-09-05~~ in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.
3. Except as otherwise provided in section 41-09-47, a purchaser having priority in chattel paper under subsection 1 or 2 also has priority in proceeds of the chattel paper to the extent that:
  - a. Section 41-09-42 provides for priority in the proceeds; or
  - b. The proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.
4. Except as otherwise provided in subsection 1 of section 41-09-51, a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.
5. For purposes of subsections 1 and 2, the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.
6. For purposes of subsections 2 and 4, if the authoritative copies of the record evidencing ~~chattel paper or an instrument indicates~~ indicate that ~~it~~ the chattel paper or instrument has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

**SECTION 70. AMENDMENT.** Section 41-09-51 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-51. (9-331) Priority of rights of purchasers of instruments, controllable accounts, controllable electronic records, controllable payment intangibles, documents, instruments, and securities under other articles - Priority of interests in financial assets and security entitlements and protection against assertion of claim under chapters 41-08 and 41-12.**

1. This chapter does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, ~~or a protected purchaser of a security, or a qualifying purchaser of a controllable account, controllable electronic record, or controllable payment intangible.~~ These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in chapters 41-03, 41-07, ~~and 41-08, and 41-12.~~

2. This chapter does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under ~~chapter~~chapters 41-08 and 41-12.
3. Filing under this chapter does not constitute notice of a claim or defense to the holders, purchasers, or persons described in subsections 1 and 2.

**SECTION 71. AMENDMENT.** Section 41-09-52 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-52. (9-332) Transfer of money - Transfer of funds from deposit account.**

1. A transferee of tangible money takes the money free of a security interest ~~unless the transferee acts if the transferee receives possession of the money without acting~~ in collusion with the debtor in violating the rights of the secured party.
2. A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account ~~unless the transferee acts if the transferee receives the funds without acting~~ in collusion with the debtor in violating the rights of the secured party.
3. A transferee of electronic money takes the money free of a security interest if the transferee obtains control of the money without acting in collusion with the debtor in violating the rights of the secured party.

**SECTION 72. AMENDMENT.** Subsection 6 of section 41-09-54 of the North Dakota Century Code is amended and reenacted as follows:

6. A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:
  - a. The encumbrancer or owner has, in ~~an authenticated~~ a signed record, consented to the security interest or disclaimed an interest in the goods as fixtures; or
  - b. The debtor has a right to remove the goods as against the encumbrancer or owner.

**SECTION 73. AMENDMENT.** Section 41-09-61 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-61. (9-341) Bank's rights and duties with respect to deposit account or certificate of deposit.**

Except as otherwise provided in subsection 3 of section 41-09-60, and unless the bank otherwise agrees in ~~an authenticated~~ a signed record, a bank's rights and duties with respect to a deposit account or certificate of deposit maintained with the bank are not terminated, suspended, or modified by:

1. The creation, attachment, or perfection of a security interest in the deposit account or certificate of deposit;
2. The bank's knowledge of the security interest; or

3. The bank's receipt of instructions from the secured party.

**SECTION 74. AMENDMENT.** Subdivision b of subsection 1 of section 41-09-66 of the North Dakota Century Code is amended and reenacted as follows:

- b. Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment ~~authenticated~~signed by the assignor or the assignee.

**SECTION 75. AMENDMENT.** Section 41-09-68 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-68. (9-406) Discharge of account debtor - Notification of assignment - Identification and proof of assignment - Restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.**

1. Subject to subsections 2 through 9 ~~and 12~~, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, ~~authenticated~~signed by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.
2. Subject to ~~subsection~~subsections 8 ~~and 12~~, notification is ineffective under subsection 1:
  - a. If it does not reasonably identify the rights assigned;
  - b. To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this chapter; or
  - c. At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:
    - (1) Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;
    - (2) A portion has been assigned to another assignee; or
    - (3) The account debtor knows that the assignment to that assignee is limited.
3. Subject to ~~subsection~~subsections 8 ~~and 12~~, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection 1.
4. In this subsection, "promissory note" includes a negotiable instrument that evidences chattel paper. Except as otherwise provided in ~~subsection~~subsections 5 ~~and 11~~ and sections 41-02.1-33 and 41-09-69, and

subject to subsection 8, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

- a. Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or
  - b. Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.
5. Subsection 4 does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under section 41-09-107 or an acceptance of collateral under section 41-09-115.
6. Except as otherwise provided in subsection 11 and sections 41-02.1-33 and 41-09-69 and subject to subsections 8 and 9, a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:
- a. Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or
  - b. Provides that the assignment, transfer, creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.
7. Subject to ~~subsections~~subsections 8 and 12, an account debtor may not waive or vary its option under subdivision c of subsection 2.
8. This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.
9. This section does not apply to an assignment of a health care insurance receivable.
10. This section prevails over any inconsistent statute, rule, or regulation.
11. Subsections 4, 6, and 10 do not apply to a security interest in an ownership interest in a general partnership, limited partnership, or limited liability company.
12. Subsections 1, 2, 3, and 7 do not apply to a controllable account or controllable payment intangible.

**SECTION 76. AMENDMENT.** Section 41-09-70 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-70. (9-408) Restrictions on assignment of promissory notes, health care insurance receivables, and certain general intangibles ineffective.**

1. Except as otherwise provided in ~~subsections~~subsections 2 and 6, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health care insurance receivable, or general intangible, is ineffective to the extent that the term:
  - a. Would impair the creation, attachment, or perfection of a security interest; or
  - b. Provides that the assignment, transfer, creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.
2. Subsection 1 applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under section 41-09-107 or an acceptance of collateral under section 41-09-115.
3. ~~A~~Except as otherwise provided in subsection 6, a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health care insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:
  - a. Would impair the creation, attachment, or perfection of a security interest; or
  - b. Provides that the assignment, transfer, creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.
4. To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection 3 would be effective under law other than this chapter but is ineffective under subsection 1 or 3, the creation, attachment, or perfection of a security interest in the promissory note, health care insurance receivable, or general intangible:

- a. Is not enforceable against the person obligated on the promissory note or the account debtor;
  - b. Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;
  - c. Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;
  - d. Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health care insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health care insurance receivable, or general intangible;
  - e. Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and
  - f. Does not entitle the secured party to enforce the security interest in the promissory note, health care insurance receivable, or general intangible.
5. This section prevails over any inconsistent statute, rule, or regulation.
6. This section does not apply to a security interest in an ownership interest in a general partnership, limited partnership, or limited liability company.
7. In this section, "promissory note" includes a negotiable instrument that evidences chattel paper.

**SECTION 77. AMENDMENT.** Section 41-09-80 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-80. (9-509) Persons entitled to file a record.**

1. A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:
  - a. The debtor authorizes the filing in ~~an authenticated~~ a signed record or pursuant to subsection 2 or 3; or
  - b. The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.
2. By ~~authenticating~~ signing or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:
  - a. The collateral described in the security agreement; and

- b. Property that becomes collateral under subdivision b of subsection 1 of section 41-09-35, regardless of whether the security agreement expressly covers proceeds.
3. By acquiring collateral in which a security interest or agricultural lien continues under subdivision a of subsection 1 of section 41-09-35, a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under subdivision b of subsection 1 of section 41-09-35.
4. A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:
  - a. The secured party of record authorizes the filing; or
  - b. The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required under section 41-09-84, the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed. The filing office shall notify the secured party of a filing under this subsection.
5. If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection 4.

**SECTION 78. AMENDMENT.** Subsection 2 of section 41-09-98 of the North Dakota Century Code is amended and reenacted as follows:

2. A secured party in possession of collateral or control of collateral under section 41-07-06, 41-09-04, 41-09-05, 41-09-05.1, 41-09-06, ~~or 41-09-07, or 41-09-07.1~~ has the rights and duties provided in section 41-09-17.

**SECTION 79. AMENDMENT.** Section 41-09-102 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-102. (9-605) Unknown debtor or secondary obligor.**

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1. Except as provided in subsection 2, a secured party does not owe a duty based on its status as secured party:
  4. a. To a person that is a debtor or obligor, unless the secured party knows:
    - a- (1) That the person is a debtor or obligor;
    - b- (2) The identity of the person; and
    - e- (3) How to communicate with the person; or
  2. b. To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:
    - a- (1) That the person is a debtor; and

- b. (2) The identity of the person.
2. A secured party owes a duty based on its status as a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:
- a. The person is a debtor or obligor; and
- b. The secured party knows that the information in subdivision a of subsection 1 relating to the person is not provided by the collateral, a record attached to or logically associated with the collateral, or the system in which the collateral is recorded.

**SECTION 80. AMENDMENT.** Subdivision a of subsection 1 of section 41-09-105 of the North Dakota Century Code is amended and reenacted as follows:

- a. A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under section 41-09-104 in the following order to:
- (1) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;
- (2) The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and
- (3) The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated signed demand for proceeds before distribution of the proceeds is completed.

**SECTION 81. AMENDMENT.** Section 41-09-108 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-108. (9-611) Notification before disposition of collateral.**

1. In this section, "notification date" means the earlier of the date on which:
- a. A secured party sends to the debtor and any secondary obligor an authenticated signed notification of disposition; or
- b. The debtor and any secondary obligor waive the right to notification.
2. Except as otherwise provided in subsection 4, a secured party that disposes of collateral under section 41-09-107 shall send to the persons specified in subsection 3 a reasonable authenticated signed notification of disposition.
3. To comply with subsection 2, the secured party shall send an authenticated signed notification of disposition to:

- a. The debtor;
  - b. Any secondary obligor;
  - c. Any other person from which the secured party has received, before the notification date, ~~an authenticated~~ a signed notification of a claim of an interest in the collateral;
  - d. Any other secured party or lienholder that, ten days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:
    - (1) Identified the collateral;
    - (2) Was indexed under the debtor's name as of that date; and
    - (3) Was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and
  - e. Any other secured party that, ten days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in subsection 1 of section 41-09-31.
4. Subsection 2 does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.
  5. A secured party complies with the requirements for notification prescribed by paragraph 2 of subdivision c of subsection 3 if:
    - a. Not later than twenty days or earlier than thirty days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in paragraph 2 of subdivision c of subsection 3; and
    - b. Before the notification date, the secured party:
      - (1) Did not receive a response to the request for information; or
      - (2) Received a response to the request for information and sent ~~an authenticated~~ a signed notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

**SECTION 82. AMENDMENT.** Subsection 1 of section 41-09-111 of the North Dakota Century Code is amended and reenacted as follows:

1. A secured party shall apply or pay over for application the cash proceeds of disposition under section 41-09-107 in the following order to:
  - a. The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

- b. The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;
- c. The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:
  - (1) The secured party receives from the holder of the subordinate security interest or other lien ~~an authenticated~~ a signed demand for proceeds before distribution of the proceeds is completed; and
  - (2) In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and
- d. A secured party that is a consignor of the collateral if the secured party receives from the consignor ~~an authenticated~~ a signed demand for proceeds before distribution of the proceeds is completed.

**SECTION 83. AMENDMENT.** Subsection 1 of section 41-09-114 of the North Dakota Century Code is amended and reenacted as follows:

- 1. In this section, "transfer statement" means a record ~~authenticated~~ signed by a secured party stating:
  - a. That the debtor has defaulted in connection with an obligation secured by specified collateral;
  - b. That the secured party has exercised its postdefault remedies with respect to the collateral;
  - c. That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and
  - d. The name and mailing address of the secured party, debtor, and transferee.

**SECTION 84. AMENDMENT.** Section 41-09-115 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-115. (9-620) Acceptance of collateral in full or partial satisfaction of obligation - Compulsory disposition of collateral.**

- 1. A secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:
  - a. The debtor consents to the acceptance under subsection 3;
  - b. The secured party does not receive, within the time set forth in subsection 4, a notification of objection to the proposal ~~authenticated~~ signed by:
    - (1) A person to which the secured party was required to send a proposal under section 41-09-116; or

- (2) Any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal.
2. A purported or apparent acceptance of collateral under this section is ineffective unless:
- a. The secured party consents to the acceptance in an ~~authenticated~~ signed record or sends a proposal to the debtor; and
  - b. The conditions of subsection 1 are met.
3. For purposes of this section:
- a. A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record ~~authenticated~~ signed after default; and
  - b. A debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record ~~authenticated~~ signed after default or the secured party:
    - (1) Sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;
    - (2) In the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and
    - (3) Does not receive a notification of objection ~~authenticated~~ signed by the debtor within twenty days after the proposal is sent.
4. To be effective under subdivision c of subsection 1, a notification of objection must be received by the secured party:
- a. In the case of a person to which the proposal was sent pursuant to section 41-09-116, within twenty days after notification was sent to that person; and
  - b. In other cases:
    - (1) Within twenty days after the last notification was sent pursuant to section 41-09-116; or
    - (2) If a notification was not sent, before the debtor consents to the acceptance under subsection 3.

**SECTION 85. AMENDMENT.** Subdivision a of subsection 1 of section 41-09-116 of the North Dakota Century Code is amended and reenacted as follows:

- a. Any person from which the secured party has received, before the debtor consented to the acceptance, an ~~authenticated~~ signed notification of a claim of an interest in the collateral;

**SECTION 86. AMENDMENT.** Section 41-09-119 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-119. (9-624) Waiver.**

1. A debtor or secondary obligor may waive the right to notification of disposition of collateral under section 41-09-108 only by an agreement to that effect entered into and ~~authenticated~~signed after default.
2. A debtor or secondary obligor may waive the right to redeem collateral under section 41-09-118 only by an agreement to that effect entered into and ~~authenticated~~signed after default.

**SECTION 87. AMENDMENT.** Section 41-09-123 of the North Dakota Century Code is amended and reenacted as follows:

**41-09-123. (9-628) Nonliability and limitation on liability of secured party - Liability of secondary obligor.**

1. ~~Unless~~Subject to subsection 5, unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:
  - a. The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this chapter; and
  - b. The secured party's failure to comply with this chapter does not affect the liability of the person for a deficiency.
2. ~~A~~Subject to subsection 5, a secured party is not liable because of its status as secured party:
  - a. To a person that is a debtor or obligor, unless the secured party knows:
    - (1) That the person is a debtor or obligor;
    - (2) The identity of the person; and
    - (3) How to communicate with the person; or
  - b. To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:
    - (1) That the person is a debtor; and
    - (2) The identity of the person.
3. A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:
  - a. A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

- b. An obligor's representation concerning the purpose for which a secured obligation was incurred.
4. A secured party is not liable under subdivision b of subsection 3 of section 41-09-120 more than once with respect to any one secured obligation.
5. Subsections 1 and 2 do not apply to limit the liability of a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:
  - a. The person is a debtor or obligor; and
  - b. The secured party knows that the information in subdivision a of subsection 2 relating to the person is not provided by the collateral, a record attached to or logically associated with the collateral, or the system in which the collateral is recorded.

**SECTION 88.** Chapter 41-11 of the North Dakota Century Code is created and enacted as follows:

**41-11-01. (A-101) Title.**

This chapter may be cited as Transitional Provisions for Uniform Commercial Code Amendments (2022).

**41-11-02. (A-102) Definitions.**

1. In this chapter:
  - a. "Adjustment date" means July 1, 2025.
  - b. "Article 12 property" means a controllable account, controllable electronic record, or controllable payment intangible.
2. The following definitions in other chapters of this title apply to this chapter.
  - a. "Controllable account". Section 41-09-02.
  - b. "Controllable electronic record". Section 41-12-02.
  - c. "Controllable payment intangible". Section 41-09-02.
  - d. "Electronic money". Section 41-09-02.
  - e. "Financing statement". Section 41-09-02.
3. Chapter 41-01 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

**41-11-03. (A-201) Saving clause.**

Except as provided in sections 41-11-04 through 41-11-09, a transaction validly entered before August 1, 2023, and the rights, duties, and interests flowing from the transaction remain valid thereafter and may be terminated, completed, consummated,

or enforced as required or permitted by law other than this title or, if applicable, this title, as though this Act had not taken effect.

**41-11-04. (A-301) Saving clause.**

1. Except as provided in sections 41-11-04 through 41-11-09, chapter 41-09 as amended by this Act and chapter 41-12 apply to a transaction, lien, or other interest in property, even if the transaction, lien, or interest was entered, created, or acquired before August 1, 2023.
2. Except as provided in subsection 3 and sections 41-11-05 through 41-11-09:
  - a. A transaction, lien, or interest in property that was validly entered, created, or transferred before August 1, 2023, and was not governed by this title, but would be subject to chapter 41-09 as amended by this Act or chapter 41-12 if it had been entered, created, or transferred after July 31, 2023, including the rights, duties, and interests flowing from the transaction, lien, or interest, remains valid after July 31, 2023; and
  - b. The transaction, lien, or interest may be terminated, completed, consummated, and enforced as required or permitted by this Act or by the law that would apply if this Act had not taken effect.
3. This Act does not affect an action, case, or proceeding commenced before August 1, 2023.

**41-11-05. (A-302) Security interest perfected before effective date.**

1. A security interest that is enforceable and perfected immediately before August 1, 2023, is a perfected security interest under this Act if, on August 1, 2023, the requirements for enforceability and perfection under this Act are satisfied without further action.
2. If a security interest is enforceable and perfected immediately before August 1, 2023, but the requirements for enforceability or perfection under this Act are not satisfied on August 1, 2023, the security interest:
  - a. Is a perfected security interest until the earlier of the time perfection would have ceased under the law in effect immediately before August 1, 2023, or the adjustment date;
  - b. Remains enforceable thereafter only if the security interest satisfies the requirements for enforceability under section 41-09-13, as amended by this Act, before the adjustment date; and
  - c. Remains perfected thereafter only if the requirements for perfection under this Act are satisfied before the time specified in subdivision a.

**41-11-06. (A-303) Security interest unperfected before effective date.**

A security interest that is enforceable immediately before August 1, 2023, but is unperfected at that time:

1. Remains an enforceable security interest until the adjustment date;

2. Remains enforceable thereafter if the security interest becomes enforceable under section 41-09-13, as amended by this Act, on August 1, 2023, or before the adjustment date; and
3. Becomes perfected:
  - a. Without further action, on August 1, 2023, if the requirements for perfection under this Act are satisfied before or at that time; or
  - b. When the requirements for perfection are satisfied if the requirements are satisfied after that time.

**41-11-07. (A-304) Effectiveness of actions taken before effective date.**

1. If action, other than the filing of a financing statement, is taken before August 1, 2023, and the action would have resulted in perfection of the security interest had the security interest become enforceable before August 1, 2023, the action is effective to perfect a security interest that attaches under this Act before the adjustment date. An attached security interest becomes unperfected on the adjustment date unless the security interest becomes a perfected security interest under this Act before the adjustment date.
2. The filing of a financing statement before August 1, 2023, is effective to perfect a security interest on August 1, 2023, to the extent the filing would satisfy the requirements for perfection under this Act.
3. The taking of an action before August 1, 2023, is sufficient for the enforceability of a security interest on August 1, 2023, if the action would satisfy the requirements for enforceability under this Act.

**41-11-08. (A-305) Priority.**

1. Subject to subsections 2 and 3, this Act determines the priority of conflicting claims to collateral.
2. Subject to subsection 3, if the priorities of claims to collateral were established before August 1, 2023, chapter 41-09 as in effect before August 1, 2023, determines priority.
3. On the adjustment date, to the extent the priorities determined by chapter 41-09 as amended by this Act modify the priorities established before August 1, 2023, the priorities of claims to Article 12 property and electronic money established before August 1, 2023, cease to apply.

**41-11-09. (A-306) Priority of claims when priority rules of chapter 41-09 do not apply.**

1. Subject to subsections 2 and 3, chapter 41-12 determines the priority of conflicting claims to Article 12 property when the priority rules of chapter 41-09 as amended by this Act do not apply.
2. Subject to subsection 3, when the priority rules of chapter 41-09 as amended by this Act do not apply and the priorities of claims to Article 12 property were established before August 1, 2023, law other than chapter 41-12 determines priority.

3. When the priority rules of chapter 41-09 as amended by this Act do not apply, to the extent the priorities determined by this Act modify the priorities established before August 1, 2023, the priorities of claims to Article 12 property established before August 1, 2023, cease to apply on the adjustment date.

**SECTION 89.** Chapter 41-12 of the North Dakota Century Code is created and enacted as follows:

**41-12-01. (12-101) Title.**

This chapter may be cited as Uniform Commercial Code - Controllable Electronic Records.

**41-12-02. (12-102) Definitions.**

1. In this chapter:
  - a. "Controllable electronic record" means a record stored in an electronic medium that can be subjected to control under section 41-12-05. The term does not include a controllable account, a controllable payment intangible, a deposit account, an electronic copy of a record evidencing chattel paper, an electronic document of title, electronic money, investment property, or a transferable record.
  - b. "Qualifying purchaser" means a purchaser of a controllable electronic record or an interest in a controllable electronic record that obtains control of the controllable electronic record for value, in good faith, and without notice of a claim of a property right in the controllable electronic record.
  - c. "Transferable record" has the meaning provided for that term in:
    - (1) Section 201(a)(1) of the Electronic Signatures in Global and National Commerce Act [Pub. L. 106-229; 114 Stat. 473; 15 U.S.C. Section 7021(a)(1)]; or
    - (2) Subsection 1 of section 9-16-15.
  - d. "Value" has the meaning provided in subsection 1 of section 41-03-29, as if references in that subsection to an "instrument" were references to a controllable account, controllable electronic record, or controllable payment intangible.
2. The definitions in chapter 41-09 of "account debtor", "controllable account", "controllable payment intangible", "chattel paper", "deposit account", "electronic money", and "investment property" apply to this chapter.
3. Chapter 41-01 contains general definitions and principles of construction and interpretation applicable throughout this title.

**41-12-03. (12-103) Relation to chapter 41-09 and consumer laws.**

1. If there is conflict between this chapter and chapter 41-09, chapter 41-09 governs.

2. A transaction subject to this chapter is subject to any applicable rule of law that establishes a different rule for consumers and title 6, sections 13-04.1-09 through 13-04.1-09.3, and chapters 13-05, 13-08, 13-10, and 47-14.

**41-12-04. (12-104) Rights in controllable account, controllable electronic record, and controllable payment intangible.**

1. This section applies to the acquisition and purchase of rights in a controllable account or controllable payment intangible, including the rights and benefits under subsections 3, 4, 5, 7, and 8 of a purchaser and qualifying purchaser, in the same manner this section applies to a controllable electronic record.
2. To determine whether a purchaser of a controllable account or a controllable payment intangible is a qualifying purchaser, the purchaser obtains control of the account or payment intangible if it obtains control of the controllable electronic record that evidences the account or payment intangible.
3. Except as provided in this section, law other than this chapter determines whether a person acquires a right in a controllable electronic record and the right the person acquires.
4. A purchaser of a controllable electronic record acquires all rights in the controllable electronic record that the transferor had or had power to transfer, except that a purchaser of a limited interest in a controllable electronic record acquires rights only to the extent of the interest purchased.
5. A qualifying purchaser acquires its rights in the controllable electronic record free of a claim of a property right in the controllable electronic record.
6. Except as provided in subsections 1 and 5 for a controllable account and a controllable payment intangible or law other than this chapter, a qualifying purchaser takes a right to payment, right to performance, or other interest in property evidenced by the controllable electronic record subject to a claim of a property right in the right to payment, right to performance, or other interest in property.
7. An action may not be asserted against a qualifying purchaser based on both a purchase by the qualifying purchaser of a controllable electronic record and a claim of a property right in another controllable electronic record, whether the action is framed in conversion, replevin, constructive trust, equitable lien, or other theory.
8. Filing of a financing statement under chapter 41-09 is not notice of a claim of a property right in a controllable electronic record.

**41-12-05. (12-105) Control of controllable electronic record.**

1. A person has control of a controllable electronic record if the electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded:
  - a. Gives the person:
    - (1) Power to avail itself of substantially all the benefit from the electronic record; and

- (2) Exclusive power, subject to subsection 2, to:
- (1) Prevent others from availing themselves of substantially all the benefit from the electronic record; and
  - (2) Transfer control of the electronic record to another person or cause another person to obtain control of another controllable electronic record as a result of the transfer of the electronic record; and
- b. Enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers specified in subsection a.
2. Subject to subsection 3, a power is exclusive under paragraph 2 of subdivision a of subsection 1 even if:
- a. The controllable electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded limits the use of the electronic record or has a protocol programmed to cause a change, including a transfer or loss of control or a modification of benefits afforded by the electronic record; or
  - b. The power is shared with another person.
3. A power of a person is not shared with another person under subdivision b of subsection 2 and the person's power is not exclusive if:
- a. The person can exercise the power only if the power also is exercised by the other person; and
  - b. The other person:
    - (1) Can exercise the power without exercise of the power by the person; or
    - (2) Is the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable electronic record.
4. If a person has the powers specified in paragraph 2 of subdivision a of subsection 1, the powers are presumed to be exclusive.
5. A person has control of a controllable electronic record if another person, other than the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable electronic record:
- a. Has control of the electronic record and acknowledges that it has control on behalf of the person; or
  - b. Obtains control of the electronic record after having acknowledged that it will obtain control of the electronic record on behalf of the person.
6. A person that has control under this section is not required to acknowledge that it has control on behalf of another person.

7. If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this chapter or chapter 41-09 otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to any other person.

**41-12-06. (12-106) Discharge of account debtor on controllable account or controllable payment intangible.**

1. An account debtor on a controllable account or controllable payment intangible may discharge its obligation by paying:
  - a. The person having control of the controllable electronic record that evidences the controllable account or controllable payment intangible; or
  - b. Except as provided in subsection 2, a person that formerly had control of the controllable electronic record.
2. Subject to subsection 4, the account debtor may not discharge its obligation by paying a person that formerly had control of the controllable electronic record if the account debtor receives a notification that:
  - a. Is signed by a person that formerly had control or the person to which control was transferred;
  - b. Reasonably identifies the controllable account or controllable payment intangible;
  - c. Notifies the account debtor that control of the controllable electronic record that evidences the controllable account or controllable payment intangible was transferred;
  - d. Identifies the transferee, in any reasonable way, including by name, identifying number, cryptographic key, office, or account number; and
  - e. Provides a commercially reasonable method by which the account debtor is to pay the transferee.
3. After receipt of a notification that complies with subsection 2, the account debtor may discharge its obligation by paying in accordance with the notification and may not discharge the obligation by paying a person that formerly had control.
4. Subject to subsection 8, notification is ineffective under subsection 2:
  - a. Unless, before the notification is sent, the account debtor and the person that, at that time, had control of the controllable electronic record that evidences the controllable account or controllable payment intangible agree in a signed record to a commercially reasonable method by which a person may furnish reasonable proof that control has been transferred;
  - b. To the extent an agreement between the account debtor and seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this chapter; or

- c. At the option of the account debtor, if the notification notifies the account debtor to:
  - (1) Divide a payment;
  - (2) Make less than the full amount of an installment or other periodic payment; or
  - (3) Pay any part of a payment by more than one method or to more than one person.
- 5. Subject to subsection 8, if requested by the account debtor, the person giving the notification under subsection 2 seasonably shall furnish reasonable proof, using the method in the agreement referred to in subdivision a of subsection 4, that control of the controllable electronic record has been transferred. Unless the person complies with the request, the account debtor may discharge its obligation by paying a person that formerly had control, even if the account debtor has received a notification under subsection 2.
- 6. A person furnishes reasonable proof under subsection 5 that control has been transferred if the person demonstrates, using the method in the agreement referred to in subdivision a of subsection 4, that the transferee has the power to:
  - a. Avail itself of substantially all the benefit from the controllable electronic record;
  - b. Prevent others from availing themselves of substantially all the benefit from the controllable electronic record; and
  - c. Transfer the powers specified in subdivisions a and b to another person.
- 7. Subject to subsection 8, an account debtor may not waive or vary its rights under subdivision a of subsection 4 and subsection 5 or its option under subdivision c of subsection 4.
- 8. This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

**41-12-07. (12-107) Governing law.**

- 1. Except as provided in subsection 2, the local law of a controllable electronic record's jurisdiction governs a matter covered by this chapter.
- 2. For a controllable electronic record that evidences a controllable account or controllable payment intangible, the local law of the controllable electronic record's jurisdiction governs a matter covered by section 41-12-06 unless an effective agreement determines that the local law of another jurisdiction governs.
- 3. The following rules determine a controllable electronic record's jurisdiction under this section:
  - a. If the controllable electronic record, or a record attached to or logically associated with the controllable electronic record and readily available for

- review, expressly provides that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this chapter or title, that jurisdiction is the controllable electronic record's jurisdiction.
- b. If subdivision a does not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this chapter or title, that jurisdiction is the controllable electronic record's jurisdiction.
  - c. If subdivisions a and b do not apply and the controllable electronic record, or a record attached to or logically associated with the controllable electronic record and readily available for review, expressly provides that the controllable electronic record is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.
  - d. If subdivisions a, b, and c do not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that the controllable electronic record or the system is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.
  - e. If subdivisions a through d do not apply, the controllable electronic record's jurisdiction is the District of Columbia.
4. If subdivision e of subsection 3 applies and this chapter is not in effect in the District of Columbia without material modification, the governing law for a matter covered by this chapter is the law of the District of Columbia as though Article 12 were in effect in the District of Columbia without material modification. In this subsection, "Article 12" means Article 12 of Uniform Commercial Code Amendments (2022).
  5. To the extent subsections 1 and 2 provide that the local law of the controllable electronic record's jurisdiction governs a matter covered by this chapter, that law governs even if the matter or a transaction to which the matter relates does not bear any relation to the controllable electronic record's jurisdiction.
  6. The rights acquired under section 41-12-04 by a purchaser or qualifying purchaser are governed by the law applicable under this section at the time of purchase.

Approved March 20, 2023

Filed March 21, 2023

## CHAPTER 372

### SENATE BILL NO. 2392

(Senators Paulson, Estenson, Wobbema)  
(Representatives Toman, Weisz)  
(Approved by Delayed Bills Committee)

AN ACT to amend and reenact subdivision ee of subsection 1 of section 41-09-02 of the North Dakota Century Code, relating to the definition of deposit account.

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

<sup>210</sup> **SECTION 1. AMENDMENT.** Subdivision ee of subsection 1 of section 41-09-02 of the North Dakota Century Code is amended and reenacted as follows:

- ee. "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property, a United States central bank digital currency, or an account evidenced by a certificate of deposit or an instrument.

Approved April 20, 2023

Filed April 21, 2023

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<sup>210</sup> Section 41-09-02 was also amended by section 42 of House Bill No. 1082, chapter 371.

# OCCUPATIONS AND PROFESSIONS

## CHAPTER 373

### HOUSE BILL NO. 1028

(Legislative Management)  
(Health Care Committee)

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to the regulation of community health workers; to amend and reenact section 23-17.3-01 and subdivision h of subsection 1 of section 23-17.3-05 of the North Dakota Century Code, relating to the regulation of home health agencies; to provide for a community health worker task force; to provide an appropriation; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 23-17.3-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **23-17.3-01. Definitions.**

In this chapter, unless the context and subject matter otherwise require:

1. "Allowed practitioner" means a physician assistant or advanced practice registered nurse.
2. "Clinical record" means a written account which covers the services the agency provides directly and those provided through arrangements with another agency which account contains pertinent past and current medical, nursing, social, and other therapeutic information, including the plan of treatment.
- ~~2.3.~~ "Department" means the department of health and human services.
- ~~3.4.~~ "Home health agency" means a public or private agency, organization, facility, or subdivision thereof which is engaged in providing home health services to individuals and families where they are presently residing for the purpose of preventing disease and promoting, maintaining, or restoring health or minimizing the effects of illness or disability.
- ~~4.5.~~ "Home health aide" means an individual who renders personal related service under the supervision of a registered professional nurse.
- ~~5.6.~~ "Home health services" means a broad range of health and social services furnished to individuals and families by a home health agency or by others under arrangements with the agency, in the places where the recipients are presently residing. Services must include the services of a currently licensed registered professional nurse and at least one other therapeutic service and

may include additional support services. These services may only be provided with the approval of a licensed physician or an allowed practitioner.

- ~~6-7.~~ "Licensed practical nurse" means one who has met all legal requirements for licensure and holds a current license to practice in North Dakota pursuant to chapter 43-12.1.
- ~~7-8.~~ "Nursing services" means those services pertaining to the preventive, curative, and restorative aspects of nursing care that are performed by or under the supervision of a registered professional nurse.
- ~~8-9.~~ "Person" means an individual, firm, partnership, association, corporation, limited liability company, or any other entity, whether organized for profit or not.
- ~~9-10.~~ "Physician" means any person currently licensed pursuant to chapter 43-17.
- ~~10-11.~~ "Registered professional nurse" means a registered nurse as defined under chapter 43-12.1.
- ~~11-12.~~ "Skilled nursing" means professional nursing services rendered by nurses licensed under chapter 43-12.1.
- ~~12-13.~~ "Supportive services" includes the use of medical appliances; medical supplies, other than drugs and biologicals prescribed by a physician; the collection of blood and other samples for laboratory analysis; and nutritional guidance, homemaker, or companion services.
- ~~13-14.~~ "Therapeutic services" means services which include:
- a. Skilled nursing care.
  - b. Medical social services.
  - c. Home health aide services.
  - d. Physical, occupational, or speech therapy.
  - e. Respiratory therapy.

**SECTION 2. AMENDMENT.** Subdivision h of subsection 1 of section 23-17.3-05 of the North Dakota Century Code is amended and reenacted as follows:

- h. The agency shall maintain clinical records on all patients to serve as documentation of the medical, nursing, and therapeutic care rendered to the patient and for communication between the physician or allowed practitioner and the agency.

**SECTION 3.** A new chapter to title 43 of the North Dakota Century Code is created and enacted as follows:

**Definitions.**

As used in this chapter:

1. "Community health representative" means an individual trained through the Indian health service to provide community-based and medically guided health care, which may include traditional native concepts.
2. "Community health worker" means an individual certified under this chapter to provide preventative services.
3. "Department" means the department of health and human services.
4. "Preventative services" means services to prevent a disease, disability, or other health condition or the progression of a disease, disability, or other health condition which are provided to an individual:
  - a. With a chronic condition;
  - b. At risk for a chronic condition who is unable to self-manage the chronic condition; or
  - c. With a documented barrier that affects the individual's health.

#### **Title - Prohibition.**

An individual may not use the title "community health worker" unless that individual is certified as a community health worker under this chapter.

#### **Certification.**

1. The department shall establish and implement a method for certifying community health workers, including:
  - a. Community health representatives; and
  - b. Other qualified individuals.
2. In implementing this section, the department may:
  - a. Adopt rules;
  - b. Charge a fee for certification and recertification;
  - c. Contract with a third party; and
  - d. Require an applicant to meet education and experience requirements.

#### **SECTION 4. COMMUNITY HEALTH WORKER TASK FORCE.**

1. During the 2023-24 interim, the department of health and human services shall establish and provide staffing and administrative services to a community health worker task force.
2. The membership of the community health worker task force is comprised of:
  - a. One representative of the medical services division of the department of health and human services, appointed by the department of health and human services;

- b. One representative of the public health division of the department of health and human services, appointed by the department of health and human services;
  - c. One representative of the tribal nations in the state, appointed by the Indian affairs commissioner in consultation with the health director of each tribal nation placed in North Dakota;
  - d. One representative of the North Dakota state university school of public health appointed by the college of health professions;
  - e. One representative of the university of North Dakota school of medicine and health sciences center for rural health, appointed by the dean of the school of medicine and health sciences;
  - f. One representative of the hospitals in this state, appointed by the North Dakota hospital association;
  - g. One representative of the federally qualified health centers, appointed by the community healthcare association of the Dakotas; and
  - h. One representative of the emergency medical services profession, appointed by the North Dakota emergency medical services association.
3. During the 2023-24 interim, the community health worker task force, in collaboration with the department of health and human services, shall:
- a. Develop a data-driven plan for community health worker scope of work, education and training, certification and regulation, medical assistance reimbursement, including reimbursement to a federally qualified health center, and a North Dakota community health worker collaborative.
  - b. Provide to the department of health and human services a proposal for a Medicaid state plan amendment or waiver to include community health workers.
  - c. Provide the department of health and human services proposed administrative rules for the community health worker scope of work, education and training, certification and regulation, medical assistance reimbursement, and a North Dakota community health worker collaborative.
  - d. Collaborate with existing clinical, public health, home, and community based service systems.

**SECTION 5. DEPARTMENT OF HEALTH AND HUMAN SERVICES - COMMUNITY HEALTH WORKERS - MEDICAID STATE PLAN AMENDMENT.**

During the 2023-25 biennium, the department of health and human services shall seek a Medicaid state plan amendment to authorize the reimbursement of certified community health workers. Upon amendment of the Medicaid state plan, the commissioner of the department of health and human services shall certify this fact to the legislative management.

**SECTION 6. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES - COMMUNITY HEALTH WORKER TASK FORCE.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise

appropriated, the sum of \$75,000, or so much of the sum as may be necessary, to the department of health and human services for the purpose of contracting with a third party to assist the community health worker task force with data collection, meeting facilitation, and report development for the period beginning with the effective date of this section and ending June 30, 2025.

**SECTION 7. EMERGENCY.** Sections 4 and 6 of this Act are declared to be an emergency measure.

Approved May 6, 2023

Filed May 9, 2023

## CHAPTER 374

### HOUSE BILL NO. 1221

(Representatives Heinert, Bosch, Ista, Meier, Motschenbacher, M. Ruby, Schatz)  
(Senators Axtman, Clemens)

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to professional transparency for health care practitioners.

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

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

##### Definitions.

As used in this chapter:

1. "Advertisement" means a communication or statement, whether printed, electronic, or oral, which names the health care practitioner in relation to the practitioner's practice, profession, or institution in which the practitioner is employed, volunteers, or otherwise provides health care services. The term includes a communication or statement on a business card, on letterhead, in a patient brochure, in electronic mail, on the internet, in an audio or video format, and any other communication or statement used in the course of business.
2. "Deceptive" or "misleading" includes an advertisement or affirmative communication or representation that misstates, falsely describes, holds out, or falsely details the health care practitioner's profession, skills, training, expertise, education, board certification, or licensure.
3. "Health care practitioner" means the following health care licensure types:
  - a. Practitioners of allopathic medicine, signified by the letters "M.D." or the words surgeon, medical doctor, or doctor of medicine, by an individual licensed to practice medicine and surgery.
  - b. Practitioners of osteopathic medicine, signified by the letters "D.O." or the words surgeon, osteopathic surgeon, osteopath, doctor of osteopathy, or doctor of osteopathic medicine.
  - c. Practitioners of nursing, signified by the letters "D.N.P.", "N.P.", "R.N.", "L.P.N.", "C.R.N.A.", or any other commonly used signifier to denote a doctorate of nursing practice, advanced practice practitioner, registered nurse, licensed practical nurse, or certified registered nurse anesthetist, respectively, as appropriate to signify the degree of licensure and degree earned from an accredited institution of higher education in the appropriate field of learning.

- d. Practitioners of podiatry, signified by the letters "D.P.M." or the words podiatrist, doctor of podiatry, podiatric surgeon, or doctor of podiatric medicine.
- e. Practitioners of chiropractic, signified by the letters "D.C." or the words chiropractor, chiropractic physician, or doctor of chiropractic.
- f. Practitioners of naturopathy, signified by the letters "N.D." or the words naturopathic doctor or doctor of naturopathy.
- g. Physician assistants, signified by the letters "P.A." or the words physician assistant.
- h. Physical therapists, signified by the letters "P.T.", "D.P.T.", "M.P.T.", or the words physical therapists.
- i. Medical assistants, signified by the letters "M.A." or the words medical assistant.
- j. Practitioners of audiology, signified by the letters "Au.D.", "Sc.D.", "Ph.D.", or the words audiologist or doctor of audiology.
- k. Psychologists, signified by the letters "Ph.D.", "Psy.D.", "Ed.D." or the word psychologist.

### **Requirements.**

1. An advertisement for health care services which names a health care practitioner must identify the type of license held pursuant to the definitions under this chapter. The advertisement may not contain deceptive or misleading information.
2. A health care practitioner providing health care services in this state shall post conspicuously and communicate affirmatively the practitioner's specific licensure as defined under this chapter. A health care practitioner shall wear a photo identification name tag during all patient encounters which must include a recent photograph of the practitioner, the practitioner's name, and the type of license. The name tag must be of sufficient size and be worn in a conspicuous manner so as to be visible and apparent.
3. A health care practitioner is not subject to the name tag requirement if:
  - a. The health care practitioner is working in a nonpatient care setting and does not have any direct patient care interactions;
  - b. The wearing of identification would jeopardize the health care practitioner's safety;
  - c. The health care practitioner is in an office in which the license type and names of all health care practitioners working in the office are displayed on the office door and each health care practitioner working in the office has the practitioner's license posted prominently in the office and readily visible to a patient; or
  - d. The office is an office of a solo health care practitioner, or of a single type of health care provider.

**Violations and enforcement.**

1. Failure to comply with this chapter constitutes a violation under this chapter.
2. A health care practitioner who violates this chapter is deemed to have engaged in unprofessional conduct, which may be grounds for disciplinary action under the licensure provisions governing the respective health care practitioner.
3. A violation of this section does not create a private right of action by a patient.
4. Notwithstanding the imposition of any penalty, a professional licensing board or other administrative agency with jurisdiction may seek an injunction or other legal means as appropriate against a person violating this chapter.

Approved April 10, 2023

Filed April 11, 2023

## CHAPTER 375

### SENATE BILL NO. 2320

(Senators Larsen, Larson)  
(Representative Louser)

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

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

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

#### **43-01-18. Fees chargeable by abstracter - Adjustments.**

1. An abstracter may charge no more than the following fees for making and certifying to an abstract:
  1. a. For each entry on an abstract or continuation of an entry on an abstract, fifteeneighteen dollars.
  2. b. For a complete certification covering the records of the several county offices, one hundred fiftyeighty-five dollars.
  3. c. For a certification covering lands in excess of one quarter section [64.75 hectares] in the same abstract of title and for each quarter section [64.75 hectares] or portion of a quarter section in excess of one, an additional fee of fifteeneighteen dollars.
  4. d. For a certification covering premises in more than one block in any subdivision in the same abstract of title and for the premises in each additional block in excess of one, an additional fee of fifteeneighteen dollars.
  5. e. For each name searched for judgments, real estate taxes, bankruptcy proceedings, federal tax liens, and state tax liens, twelve dollars and fees charged to the abstracter by a governmental agency or governmental entity.
  6. f. The fees as may be fixed by special statute.
2. Beginning January 1, 2024, and annually thereafter, the board shall determine and publish adjustments to the fees allowed under this section and section 43-01-15.1 to account for inflation. Under this subsection, in calculating an adjustment the board shall use the consumer price index for all urban consumers in the midwest region as determined by the United States department of labor, bureau of labor statistics. The board shall round the fees to the nearest whole number.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 376

### SENATE BILL NO. 2061

(Workforce Development Committee)  
(At the request of the Board of Accountancy)

AN ACT to create and enact a new subsection to section 43-02.2-09 of the North Dakota Century Code, relating to administrative hearings; and to amend and reenact subsection 11 of section 43-02.2-02, paragraph 2 of subdivision f of subsection 5 of section 43-02.2-03, and sections 43-02.2-04 and 43-02.2-10, of the North Dakota Century Code, relating to the practice and licensure of public accountancy.

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

**SECTION 1. AMENDMENT.** Subsection 11 of section 43-02.2-02 of the North Dakota Century Code is amended and reenacted as follows:

11. "Principal place of business" means the office location ~~designed~~designated by the licensee for purposes of substantial equivalence and reciprocity.

**SECTION 2. AMENDMENT.** Paragraph 2 of subdivision f of subsection 5 of section 43-02.2-03 of the North Dakota Century Code is amended and reenacted as follows:

- (2) Rules of procedure governing the conduct of investigations and hearings ~~by the board~~;

**SECTION 3. 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. The board may not grant a certificate if the applicant has been convicted of a felony, or of any crime an element of which is dishonesty or fraud, under the laws of the United States, this state, or any other state if the acts involved would have constituted a crime under the laws of this state.~~

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, upon a showing that the applicant 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. 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) The applicant passed the uniform CPA examinations;
    - (2) 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 shall pay the applicable 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:
  - a. Meets the good moral character requirement of subsection 2;
  - b. 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;
  - e-b. Has completed examinations generally equivalent to those prescribed under subsection 6;
  - d-c. Has satisfactorily completed any additional examinations that the board prescribes; and
  - e-d. Has paid the applicable fees.

5. The education requirement for a certificate is as follows:
  - a. ~~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.~~
  - b. ~~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. 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. candidate has at least one hundred twenty semester hours of college education.
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 re-examination.

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. The board may by rule create an exception to the continuing education requirements for certificate holders who do not perform or offer to perform for the public one or more kinds of services involving the use of accounting or auditing skills, including issuance of reports on financial statements or of one or more kinds of management advisory, financial advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters. Licensees granted such an exception by the board shall place the word "inactive" adjacent to the licensee's CPA title or LPA title on any business card, letterhead or any other document or device, with the exception of the licensee's CPA or LPA certificate, on which the licensee's CPA or LPA title appears. In addition, inactive CPAs, in lieu of "inactive", may place the word "retired" adjacent to the individual's CPA title or LPA title on any business card, letterhead or any other document or device, with the exception of the individual's CPA or LPA certificate, on which the individual's CPA or LPA title appears. Nothing in this section precludes an inactive CPA, from providing the following volunteer, uncompensated services: tax preparation services, participating in a government-sponsored business mentoring program, serving on the board of directors for a nonprofit or governmental organization, or serving on a government-appointed advisory body. A licensee only may convert to inactive status if the licensee holds a license in good standing.

**SECTION 4.** A new subsection to section 43-02.2-09 of the North Dakota Century Code is created and enacted as follows:

A hearing regarding a disciplinary action or denial of a license must be held pursuant to chapter 28-32.

**SECTION 5. 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.**

1. 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 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~~
2. The board, upon receipt of a complaint or other information suggesting violations of this chapter or of the rules of the board, may conduct investigations to determine whether there is reasonable basis to pursue disciplinary action against any individual or firm for the violation.
3. The board may designate a member or employee to serve as investigating officer to conduct an investigation. Upon completion of an investigation, the investigating officer may file a report with the board. The board may find grounds to pursue disciplinary action under section 43-02.2-09 upon the basis of the report or may return the report to the investigating officer for further investigation.
4. Until there has been a determination to pursue disciplinary action under section 43-02.2-09, 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~~ pendency of the 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.

Approved April 21, 2023

Filed April 24, 2023

## CHAPTER 377

### HOUSE BILL NO. 1465

(Representatives Longmuir, Dockter, Fegley, Hatlestad, Richter, Stemen, Vigesaa)  
(Senators Bekkedahl, Kannianen, Rust, Vedaa)

AN ACT to amend and reenact sections 43-03-03 and 43-03-04 and subsections 4 and 5 of section 43-03-13 of the North Dakota Century Code, relating to membership of the state board of architecture and landscape architecture; and to provide for application.

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

**SECTION 1. 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.**

1. The state board of architecture and landscape architecture consists of ~~three~~five members appointed by the governor for terms of six years each with their terms of office staggered ~~so arranged that no more than~~ one term and ~~only one~~ expires on March fourteenth of each odd-numbered year.
2. The board is composed of three architects, one landscape architect, and one public member.
3. 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 2. 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.**

Each professional member of the board must be a resident of this state who is an architect or landscape architect and who has been a resident of and in active practice in this state ~~as an architect~~ for not less than five years before appointment. The public member of the board must be a resident of this state for at least five years before appointment, who is not licensed under this chapter, who is not a spouse of an individual licensed under this chapter, and who is not employed by an architecture or landscape architecture firm. The governor may remove any member of the board for inefficiency or neglect of duty.

**SECTION 3. AMENDMENT.** Subsection 4 of section 43-03-13 of the North Dakota Century Code is amended and reenacted as follows:

4. In the case of an architect, must hold either:

- a. Hold a professional degree in architecture from an accredited school of architecture and must have the required practical experience, as established by the board; or
- b. Provide evidence of education and experience that is substantially equivalent to a professional degree and practical experience, as established by the board;

**SECTION 4. AMENDMENT.** Subsection 5 of section 43-03-13 of the North Dakota Century Code is amended and reenacted as follows:

5. In the case of a landscape architect, must hold either:
  - a. 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
  - b. Provide evidence of education and experience that is substantially equivalent to a professional degree and practical experience, as established by the board; and

**SECTION 5. APPLICATION.** Notwithstanding section 43-03-03, to stagger terms, the initial appointment of the new members of the state board of architecture and landscape architecture may be for terms shorter than six years.

Approved April 24, 2023

Filed April 24, 2023

## CHAPTER 378

### HOUSE BILL NO. 1112

(Representative M. Ruby)

AN ACT to amend and reenact section 43-04-03, subsection 5 of section 43-04-12, and section 43-04-41 of the North Dakota Century Code, relating to exemptions from regulation of barbers, barber licensure fees, and disciplinary hearings for barbers.

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

**SECTION 1. AMENDMENT.** Section 43-04-03 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-04-03. Exemptions.**

1. The following ~~persons~~individuals, when engaged in the proper discharge of their occupational duties, are exempt from the provisions of this chapter:
  1. ~~Persons~~
    - a. Individuals authorized by the laws of this state to practice medicine and surgery.
    2. b. Commissioned medical or surgical officers of the United States army, navy, air force, or marine hospital service.
    3. c. Registered nurses.
    4. ~~Registered hairdressers and~~
      - d. Licensed cosmetologists.

The persons

2. ~~An individual exempt by subsections 1, 2, and 3 under subdivision a, b, or c of subsection 1~~ may not shave nor trim the beard nor cut the hair of any ~~person~~individual for cosmetic purposes.
3. ~~An individual exempt under this section may not advertise, hold out to the public, or represent in any manner that the individual is a barber, or violate the barber pole limitation under section 43-04-49.~~

**SECTION 2. AMENDMENT.** Subsection 5 of section 43-04-12 of the North Dakota Century Code is amended and reenacted as follows:

5. The board shall sponsor an educational program to carry out the purposes of protecting the public health and safety by encouraging barbershops that are clean, healthful, and sanitary with capable, skilled, professional barbers. ~~The board is directed to shall use the sum of five an amount not to exceed ten~~

dollars from each fee paid for the renewal of ~~any~~ barber's certificate for the purpose of ~~such~~this educational program.

**SECTION 3. AMENDMENT.** Section 43-04-41 of the North Dakota Century Code is amended and reenacted as follows:

**43-04-41. Revocation of, suspension of, or refusal to issue certificate - Hearing.**

The board may not refuse to issue, refuse to renew, suspend, or revoke any certificate of registration to practice barbering for any of the causes set forth in section 43-04-40 unless the person accused has been given a public hearing by the board. A hearing under this section must be conducted pursuant to chapter 28-32. For purposes of the hearing, section 28-32-21 applies only to the licensee. The person must be notified in writing of the charges against the person and of the time set for the hearing, which must be not less than twenty days after serving the notice. Upon the hearing of any such proceedings, the board may administer oaths and may procure by its subpoena the attendance of witnesses and the production of relevant books and papers. Any court in this state, upon application of the accused or the board, by order duly entered, may require the attendance of witnesses and the production of relevant books and papers at such hearing.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 379

### SENATE BILL NO. 2207

(Senators Piepkorn, Burckhard, Sickler, Sorvaag)  
(Representatives Cory, Hanson)

AN ACT to create and enact a new subsection to section 43-07-07 of the North Dakota Century Code, relating to license fees and license renewal fees for nonprofit construction contractors; and to amend and reenact section 43-07-08 of the North Dakota Century Code, relating to contractor licensing exceptions.

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

**SECTION 1.** A new subsection to section 43-07-07 of the North Dakota Century Code is created and enacted as follows:

A nonprofit entity that is constructing or rehabilitating a single-family dwelling that will be given to or sold below the appraised value to a low-income person, may not be charged a fee by the secretary of state for a license or renewal of license as described and required under this chapter.

**SECTION 2. AMENDMENT.** Section 43-07-08 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-07-08. Exceptions.**

This chapter does not apply to:

1. Any authorized representative ~~or representatives~~ of the United States government, the state of North Dakota, or any county, municipality, irrigation district, reclamation district, or other political corporation.
2. Any person ~~whethat~~ furnishes any fabricated or finished product, material, or article of merchandise ~~whichthat~~ is not incorporated into or attached to real property by such person so as to become affixed thereto.

Approved April 4, 2023

Filed April 5, 2023

## CHAPTER 380

### SENATE BILL NO. 2114

(Workforce Development Committee)  
(At the request of the North Dakota Board of Nursing)

AN ACT to amend and reenact sections 43-12.1-02 and 43-12.1-08 of the North Dakota Century Code, relating to the establishment of an alternative to discipline program for nurses licensed in North Dakota.

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

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

##### **43-12.1-02. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Advanced practice registered nurse" means an individual who holds a current license to practice in this state as an advanced practice registered nurse within one of the roles of certified nurse practitioner, certified registered nurse anesthetist, certified nurse midwife, or certified clinical nurse specialist, and who functions in one of the population foci as approved by the board.
2. "Alternative to discipline" means a voluntary alternative to traditional discipline program designed for nurses with substance use disorders, behavioral health conditions, or medical health conditions.
3. "Board" means the North Dakota board of nursing.
- ~~3.4.~~ "Licensed practical nurse" means an individual who holds a current license to practice in this state as a licensed practical nurse and who practices dependently under the supervision of a registered nurse, specialty practice registered nurse, advanced practice registered nurse, or licensed practitioner.
- ~~4.5.~~ "Nurse" means an individual who is currently licensed as an advanced practice registered nurse, specialty practice registered nurse, registered nurse, or licensed practical nurse.
- ~~5.6.~~ "Nursing" means the performance of acts utilizing specialized knowledge, skills, and abilities for people in a variety of settings. The term includes the following acts, which may not be deemed to include acts of medical diagnosis or treatment or the practice of medicine as defined in chapter 43-17:
  - a. The maintenance of health and prevention of illness.
  - b. Assessing and diagnosing human responses to actual or potential health problems.
  - c. Providing supportive and restorative care and nursing treatment, medication administration, health counseling and teaching, case finding

and referral of individuals who are ill, injured, or experiencing changes in the normal health processes.

- d. Administration, teaching, supervision, delegation, and evaluation of health and nursing practices.
- e. Collaboration with other health care professionals in the implementation of the total health care regimen and execution of the health care regimen prescribed by a health care practitioner licensed under the laws of this state.

6-7. "Prescriptive practices" means assessing the need for drugs, immunizing agents, or devices and writing a prescription to be filled by a licensed pharmacist.

7-8. "Registered nurse" means an individual who holds a current license to practice in this state as a registered nurse and who practices nursing independently and interdependently through the application of the nursing process.

8-9. "Specialty practice registered nurse" means an individual who holds a current license to practice in this state as a specialty practice registered nurse and who has current certification from a national certifying body in a specific area of nursing practice.

9-10. "Unlicensed assistive person" means an assistant to the nurse, who regardless of title is authorized to perform nursing interventions delegated and supervised by a nurse.

**SECTION 2. AMENDMENT.** Section 43-12.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.1-08. Duties of the board.**

1. The board shall regulate the practice of nursing as provided in this chapter.
2. The board shall:
  - a. Enforce this chapter.
  - b. Adopt and enforce administrative rules necessary to administer this chapter after collaborating and consulting with North Dakota nursing organizations and other affected parties.
  - c. Appoint and employ a registered nurse to serve as executive director and approve any additional staff positions necessary to administer this chapter.
  - d. Establish fees and receive all moneys collected under this chapter and authorize all expenditures necessary to conduct the business of the board. Any balance of fees after payment of expenditures must be used to administer this chapter.
  - e. Collect and analyze data regarding nursing education, nursing practice, and nursing resources.

- f. Issue and renew limited licenses or registrations to individuals requiring accommodation to practice nursing or assist in the practice of nursing.
- g. ~~Establish a nursing student loan program funded by license fees to encourage individuals to enter and advance in the nursing profession.~~ Conduct and support projects pertaining to funding assistance for nurse or student participation in nursing education.
- h. Establish a registry of individuals licensed or registered by the board.
- i. Report annually to the governor and nursing profession regarding the regulation of nursing in the state.
- j. Conduct and support projects pertaining to nursing education and practice.
- k. ~~Adopt and enforce administrative rules to allow nurses licensed by another state to receive short-term clinical education in North Dakota health care facilities.~~
- l. License qualified applicants for nurse licensure.
- ~~m.~~ l. Register qualified applicants for the unlicensed assistive person registry.
- ~~n.~~ m. Adopt and enforce rules for continuing competence of licensees and registrants.
- ~~o.~~ n. Adopt and enforce rules for nursing practices.
- ~~p.~~ o. Issue practice statements regarding the interpretation and application of this chapter.
- ~~q.~~ p. Adopt and enforce rules to establish an alternative to discipline program. Records of an alternative to discipline program, including the identity of a nurse participating in the alternative to discipline program, are exempt records under section 44-04-17.1. Records of an alternative to discipline program may be disclosed by the board when disclosure of the records is necessary to protect the health, safety, and welfare of the public, when ordered by a court of competent jurisdiction, and as otherwise determined by the board at the discretion of the board.

Approved March 23, 2023

Filed March 23, 2023

## CHAPTER 381

### SENATE BILL NO. 2344

(Senator K. Roers)

AN ACT to amend and reenact section 43-12.3-06 of the North Dakota Century Code, relating to the health care professional student loan repayment program; and to provide an appropriation.

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

<sup>211</sup> **SECTION 1. AMENDMENT.** Section 43-12.3-06 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-12.3-06. Student loan repayment program - Contract.**

1. The health council shall enter a contract with a selected health care professional. The health council shall agree to provide student loan repayments on behalf of the selected health care professional subject to the requirements and limitations of this section.
  - a. For a physician:
    - (1) The loan repayment may not exceed twenty thousand dollars per year, and may not exceed one hundred thousand dollars over five years; and
    - (2) The matching funds must equal fifty percent of the amount required in paragraph 1.
  - b. For a clinical psychologist:
    - (1) The loan repayment may not exceed twelve thousand dollars per year, and may not exceed sixty thousand dollars over five years; and
    - (2) The matching funds must equal twenty-five percent of the amount required in paragraph 1.
  - c. For an advanced practice registered nurse, registered nurse, or a physician assistant:
    - (1) The loan repayment may not exceed four thousand dollars per year, and may not exceed twenty thousand dollars over five years; and
    - (2) The matching funds must equal ten percent of the amount required in paragraph 1.
  - d. For a behavioral health professional:

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<sup>211</sup> Section 43-12.3-06 was also amended by section 84 of House Bill No. 1165, chapter 229.

- (1) The loan repayment may not exceed four thousand dollars per year, and may not exceed twenty thousand dollars over five years; and
    - (2) The matching funds must equal ten percent of the amount required in paragraph 1.
  - e. For purposes of this section, a behavioral health professional means an individual who practices in the behavioral health field and is:
    - (1) A licensed addiction counselor;
    - (2) A licensed professional counselor;
    - (3) A licensed social worker;
    - (4) A registered nurse;
    - (5) A specialty practice registered nurse; or
    - (6) A licensed behavior analyst.
2.
  - a. Payments under this section must be made on behalf of the health care professional directly to the Bank of North Dakota or to another participating lending institution.
  - b. Except as otherwise provided, payments under this section may be made only at the conclusion of each ~~twelve-month~~twelve-month period of service.
  - c. Prorated payments may be made only if:
    - (1) The repayment of the loan requires less than a full annual payment;
    - (2) The health care professional is terminated or resigns from his or her position; or
    - (3) The health care professional is unable to complete a twelve-month period of service due to the individual's death, a certifiable medical condition or disability, or a call to military service.
3. Payments under this section terminate upon the earlier of:
  - a. The full repayment of the health care professional's student loan; or
  - b. The completion of five years as a participant in the student loan repayment program.
4. The health council shall waive the requirements of this section ~~that~~which pertain to matching funds if the health care professional opens a new practice as a solo practitioner in a city that has fewer than fifteen thousand residents.

**SECTION 2. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES - HEALTH CARE PROFESSIONAL STUDENT LOAN REPAYMENT PROGRAM.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$48,000, or so much of the sum as may be necessary, to the department of health and human services for the purpose of

funding four slots for registered nurses under the health care professional student loan repayment program, for the biennium beginning July 1, 2023, and ending June 30, 2025.

Approved April 26, 2023

Filed April 26, 2023

## CHAPTER 382

### SENATE BILL NO. 2115

(Workforce Development Committee)  
(At the request of the North Dakota Board of Medicine)

AN ACT to create and enact section 43-17-02.5, two new subsections to section 43-17-07.1, section 43-17-27.2, and a new subsection to section 43-17-41 of the North Dakota Century Code, relating to licensing and discipline of physicians and physician assistants; to amend and reenact sections 43-17-01, 43-17-02, 43-17-02.1, 43-17-02.2, 43-17-02.3, 43-17-03, 43-17-04, 43-17-05, 43-17-06, 43-17-07, 43-17-11, 43-17-14, 43-17-18, 43-17-24, 43-17-25, 43-17-26.1, 43-17-27.1, 43-17-31, 43-17-32.1, 43-17-37, 43-17-38, 43-17-43, 43-17-46, 43-17.1-01, 43-17.1-02, 43-17.1-05, 43-17.1-05.1, 43-17.1-06, and 43-17.1-08 of the North Dakota Century Code, relating to licensing and discipline of physicians and physician assistants; and to repeal sections 43-17-21 and 43-17-30 of the North Dakota Century Code, relating to licensing and discipline of physicians and physician assistants.

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

**SECTION 1. AMENDMENT.** Section 43-17-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-17-01. Definitions.**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota board of medicine.
2. "Licensee" means a physician, resident physician, or physician assistant licensed to practice in North Dakota.
3. "Physician" includes physician and surgeon (M.D.) and osteopathic physician and surgeon (D.O.).
4. "Physician assistant" means an individual issued a physician assistant license under this chapter.
5. "Practice of medicine" includes the practice of medicine, surgery, and obstetrics. The following persons are regarded as practicing medicine:
  - a. A person that holds out to the public as being engaged within this state in the diagnosis or treatment of diseases or injuries of human beings.
  - b. A person that suggests, recommends, or prescribes any form of treatment for the intended relief or cure of any physical or mental ailment of any individual, with the intention of receiving, directly or indirectly, any fee, gift, or compensation.
  - c. A person that maintains an office for the examination or treatment of individuals afflicted with disease or injury of the body or mind.

- d. A person that attaches the title M.D., surgeon, doctor, D.O., osteopathic physician and surgeon, or any other similar word or words or abbreviation to the person's name, indicating that the person is engaged in the treatment or diagnosis of the diseases or injuries of human beings shall be held to be engaged in the practice of medicine.
6. "Resident physician" means an individual issued a postgraduate training license under this chapter.
7. "Telemedicine" means the practice of medicine using electronic communication, information technologies, or other means between a licensee in one location and a patient in another location, with or without an intervening health care provider. "Telemedicine" includes direct interactive patient encounters, asynchronous store-and-forward technologies, and remote monitoring.

**SECTION 2. AMENDMENT.** Section 43-17-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-02. Persons exempt from the provisions of chapter.**

The provisions of this chapter do not apply to the following:

1. ~~Students of medicine or osteopathy who are continuing their training and performing the duties of a resident in any hospital or institution maintained and operated by the state, an agency of the federal government, or in any residency program accredited by the accreditation council on graduate medical education, provided that the North Dakota board of medicine may adopt rules relating to the licensure, fees, qualifications, activities, scope of practice, and discipline of such persons.~~
2. The domestic administration of family remedies.
3. ~~2.~~ Dentists practicing their profession when properly licensed.
4. ~~3.~~ Optometrists practicing their profession when properly licensed.
5. ~~4.~~ The practice of christian science or other religious tenets or religious rules or ceremonies as a form of religious worship, devotion, or healing, if the person administering, making use of, assisting in, or prescribing, such religious worship, devotion, or healing does not prescribe or administer drugs or medicines and does not perform surgical or physical operations, and if the person does not hold out to be a physician or surgeon.
6. ~~5.~~ Commissioned medical officers of the armed forces of the United States, the United States public health service, and medical officers of the veterans administration of the United States, in the discharge of their official duties, and licensed physicians from other states or territories if called in consultation with a person licensed to practice medicine in this state.
7. ~~6.~~ Doctors of chiropractic duly licensed to practice in this state pursuant to the statutes regulating such profession.
8. ~~7.~~ Podiatrists practicing their profession when properly licensed.

- ~~9. An individual rendering services as a physician assistant. However, sections 43-17-02.1 and 43-17-02.2 apply to physician assistants. The board shall adopt rules governing the conduct, licensure, fees, qualifications, and discipline of physician assistants. Physician assistants are not authorized to perform any services that must be performed by persons licensed pursuant to chapters 43-12.1, 43-13, 43-15, and 43-28 or services otherwise regulated by licensing laws, notwithstanding medical doctors need not be licensed specifically to perform the services contemplated under such chapters or licensing laws.~~
- ~~10-8.~~ A nurse practicing the nurse's profession when properly licensed by the North Dakota board of nursing.
- ~~11-9.~~ A naturopath duly licensed to practice in this state pursuant to the statutes regulating such profession.
- ~~12-10.~~ An individual duly licensed to practice medical imaging or radiation therapy in this state under chapter 43-62.
- ~~13-11.~~ An acupuncturist duly licensed to practice in this state pursuant to the statutes regulating such profession.

**SECTION 3. AMENDMENT.** Section 43-17-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-02.1. Physician assistant - Scope of practice.**

1. An individual providing services of a physician assistant as outlined in this chapter to a patient located in the state shall possess an active North Dakota license for physician assistant practice. The board shall adopt rules governing the conduct, licensure, fees, qualifications, and discipline of physician assistants. Physician assistants are not authorized to perform any services that must be performed by individuals licensed pursuant to chapters 43-12.1, 43-13, 43-15, and 43-28 or services otherwise regulated by licensing laws, notwithstanding medical doctors need not be licensed specifically to perform the services contemplated under such chapters or licensing laws.
2. A physician assistant may:
  - a. Provide a legal medical service for which a physician assistant is prepared by education, training, and experience and is competent to perform, including:
    - (1) Obtaining and performing a comprehensive health history and physical examination;
    - (2) Evaluating, diagnosing, managing, and providing medical treatment;
    - (3) Ordering and evaluating a diagnostic study and therapeutic procedure;
    - (4) Performing a diagnostic study or therapeutic procedure not involving the use of medical imaging as defined in section 43-62-01 or radiation therapy as defined in section 43-62-01;

- (5) Performing limited sonography on a focused imaging target to assess specific and limited information about a patient's medical condition or to provide real-time visual guidance for another procedure;
  - (6) Educating a patient on health promotion and disease prevention;
  - (7) Providing consultation upon request; and
  - (8) Writing a medical order;
- b. Obtain informed consent;
  - c. Supervise, delegate, and assign therapeutic and diagnostic measures not involving the use of medical imaging as defined in section 43-62-01 or radiation therapy as defined in section 43-62-01 to licensed or unlicensed personnel;
  - d. Certify the health or disability of a patient as required by any local, state, or federal program;
  - e. Authenticate any document with the signature, certification, stamp, verification, affidavit, or endorsement of the physician assistant if the document may be authenticated by the signature, certification, stamp, verification, affidavit, or endorsement of a physician; and
  - f. Pronounce death.
- 2-3. A physician assistant shall collaborate with, consult with, or refer to the appropriate member of the health care team as indicated by the condition of the patient, the education, experience, and competence of the physician assistant, and the standard of care. The degree of collaboration must be determined at the practice which may include decisions made by the employer, group, hospital service, and the credentialing and privileging systems of a licensed facility. A physician assistant is responsible for the care provided by that physician assistant and a written agreement relating to the items in this chapter is not required.

3-4. A physician assistant:

- a. May prescribe, dispense, administer, and procure drugs and medical devices;
- b. May plan and initiate a therapeutic regimen that includes ordering and prescribing nonpharmacological interventions, including durable medical equipment, nutrition, blood and blood products, and diagnostic support services, including home health care, hospice, and physical and occupational therapy;
- c. May prescribe and dispense schedule II through V substances as designated by the federal drug enforcement agency and all legend drugs;
- d. May not dispense a drug, unless pharmacy services are not reasonably available, dispensing is in the best interest of the patient, or an emergency exists;

- e. May request, receive, and sign for a professional sample, and may distribute a professional sample to a patient; and
  - f. If prescribing or dispensing a controlled substance, shall register with the federal drug enforcement administration and shall comply with appropriate state and federal laws.
- 4-5. A physician assistant shall practice at a licensed health care facility, facility with a credentialing and privileging system, physician-owned facility or practice, or facility or practice approved by the board.
- 6-6. Notwithstanding subsections 23 and 45, a physician assistant with less than four thousand hours of practice approved by the board under subsection 45 shall execute a written collaborative agreement that:
- a. Is between a physician and a physician assistant with less than four thousand hours practice;
  - b. Describes how collaboration required under subsection 23 must occur; and
  - c. Is available to the board on request.
- 6-7. A physician assistant shall comply with any privileging and credentialing systems at the facility at which the physician assistant practices.

**SECTION 4. AMENDMENT.** Section 43-17-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-02.2. Physician assistant - Use of certain words or initials prohibited.**

1. ~~A person that is not a physician assistant may not:~~
  - a. ~~Represent oneself as a physician assistant or act as a physician assistant; or~~
  - b. ~~Use any combination or abbreviation of the term or title "physician assistant" or "PA" to indicate or imply the person is a physician assistant.~~An individual not licensed as a physician or resident physician under this chapter is prohibited from using the title of "doctor of medicine", "medical doctor", "doctor of osteopathic medicine", "osteopathic physician", "physician", "M.D.", or "D.O."
2. ~~However, an individual who is not licensed as a physician assistant under this chapter but who meets the qualifications for licensure as a physician assistant under this chapter may use the title "physician assistant" or "PA" but may not act or practice as a physician assistant unless licensed under this chapter.~~An individual not licensed as a physician assistant under this chapter is prohibited from using the title of "physician assistant" or "P.A."
3. This section may not be construed as to prohibit a licensed health care professional from using a title incorporating any of the words specified in subsection 1 or 2, or from using a title or designation that is not specifically protected by subsection 1 or 2, if the title or designation used is permitted under the health care professional's practice act.

4. Notwithstanding subsections 1 and 2, an individual who does not hold an active physician, resident physician, or physician assistant license may still use the title conferred by a qualified educational degree recognized under this chapter, but may not practice unless licensed under this chapter.

**SECTION 5. AMENDMENT.** Section 43-17-02.3 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-02.3. Practice of medicine or osteopathy by holder of permanent, unrestricted license - Exceptions.**

The practice of medicine is deemed to occur in the state the patient is located. A practitioner providing medical care to a patient located in this state is subject to the licensing and disciplinary laws of this state and shall possess an active North Dakota license for the practitioner's profession. Notwithstanding anything in this chapter to the contrary, any physician who is the holder of a permanent, unrestricted license to practice medicine or osteopathy in any state or territory of the United States, the District of Columbia, or a province of Canada may practice medicine or osteopathy in this state without first obtaining a license from the North Dakota board of medicine under one or more of the following circumstances:

1. As a member of an organ harvest team;
2. On board an air ambulance and as a part of its treatment team;
3. To provide one-time consultation on a diagnosis for a patient to a physician licensed in the state, or teaching assistance for a period of not more than seven days; or
4. To provide consultation or teaching assistance previously approved by the board for charitable organizations; or
5. Under rules adopted by the board.

**SECTION 6.** Section 43-17-02.5 of the North Dakota Century Code is created and enacted as follows:

**43-17-02.5. Licensure for resident physicians.**

Resident physicians of medicine or osteopathy who are continuing their training and performing the duties of a resident in a hospital or institution maintained and operated by the state, an agency of the federal government, or a residency program accredited by the accreditation council on graduate medical education will be required to possess an active North Dakota residency license. The board shall adopt rules relating to the licensure, fees, qualifications, activities, scope of practice, and discipline of such individuals.

<sup>212</sup> **SECTION 7. AMENDMENT.** Section 43-17-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-03. North Dakota board of medicine - How appointed - Qualifications.**

1. The governor shall appoint a North Dakota board of medicine consisting of ~~thirteen~~fourteen members; ten physicians, nine of whom are doctors of

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<sup>212</sup> Section 43-17-03 was also amended by section 1 of Senate Bill No. 2221, chapter 383.

medicine, one of whom is a doctor of osteopathy, ~~one;~~ two of whom ~~is~~ are physician assistant~~s~~assistants; and two of whom are designated as public members. If no osteopathic physician is qualified and willing to serve, any qualified physician may be appointed in place of the osteopathic physician.

2. Each physician member must:
  - a. Be a practicing physician of integrity and ability.
  - b. Be a resident of and duly licensed to practice medicine in this state.
  - c. Be a graduate of a medical or osteopathic school of high educational requirements and standing.
  - d. Have been engaged in the active practice of the physician's profession within this state for a period of at least five years.
3. Each public member of the board must:
  - a. Be a resident of this state.
  - b. Be at least twenty-one years of age.
  - c. Not be affiliated with any group or profession that provides or regulates health care in any form.
4. ~~The~~Each physician assistant member of the board must:
  - a. Be a practicing physician assistant of integrity and ability.
  - b. Be a resident of and be duly licensed to practice as a physician assistant in this state.
  - c. Have been engaged in the active practice as a physician assistant within this state for a period of at least five years.
5. An individual appointed to the board shall qualify by taking the oath required of civil officers.

**SECTION 8. AMENDMENT.** Section 43-17-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-04. Term of office.**

The term of office of each member of the board is four years and until a successor is appointed and qualified. The terms must be so arranged that no more than four terms expire on the thirty-first of July of each year. The governor shall fill all vacancies by appointment but in case of a vacancy before the expiration of a term, the appointment must be for the residue of the term only. The board, at least six months in advance of filling an expired term, shall communicate with the governor's office regarding specialty areas to be filled on the board. The governor's office shall take this information into consideration when filling vacancies. No member of the board may serve thereon for more than two ~~successive~~full terms.

**SECTION 9. AMENDMENT.** Section 43-17-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-05. Removal of members of North Dakota board of medicine - Re-election.**

1. The governor for good cause shown and upon the recommendation of three-fourths of the members of the North Dakota board of medicine may remove any member of such board for misconduct, incapacity, or neglect of duty.
2. If a member of the board is consistently absent from board or committee meetings, the board may declare a vacancy. Vacancies on the board must be filled by appointment by the governor.

**SECTION 10. AMENDMENT.** Section 43-17-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-06. Officers of the board and executive director.**

The board shall elect a president and vice president from its own number and employ an executive director to provide administrative services to the board. ~~The executive director need not be a member of the board. The executive director must be the general administrative and prosecuting officer of such board.~~

**SECTION 11. AMENDMENT.** Section 43-17-07 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-07. Meetings of the board.**

The board shall hold at least three meetings in each calendar year ~~for the examination of applicants for licensure,~~ and may call such special meetings as may be necessary. The meetings must be held at such places as the board may designate.

**SECTION 12.** Two new subsections to section 43-17-07.1 of the North Dakota Century Code are created and enacted as follows:

Utilize board funds and resources for promotion, education, and outreach services for the professions and students of the professions licensed under this chapter.

Adopt rules to implement this chapter.

**SECTION 13. AMENDMENT.** Section 43-17-11 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-11. Records of board - License applications - Preservation.**

The board shall keep a record of all of its proceedings and applications for license. ~~Application records must be preserved for at least six years beyond the disposition thereof or the last annual registration of the licensee, whichever is longer.~~ Failure of an applicant to submit a completed application within one year is grounds to discontinue processing the application, and records will be disposed of unless otherwise approved by the chairman and executive director for good cause.

**SECTION 14. AMENDMENT.** Section 43-17-14 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-14. Compensation - Expenses of board and the members thereof.**

1. A member of the board shall receive for each day during which the member actually is engaged in the performance of the duties of the member's office such per diem as must be fixed by the board and such mileage as is provided in ~~sections 44-08-04 and 54-06-09.~~
2. The executive director of the board shall receive such salary or other compensation, and such allowance for clerical and other expenses of the board as the board shall determine.
3. The board may employ staff to carry out the duties under this chapter.

**SECTION 15. AMENDMENT.** Section 43-17-18 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-18. LicensePhysician license requirements.**

1. General. Every applicant for licensure shall file a written application, on forms provided by the board, showing to the board's satisfaction that the applicant is ~~of good moral character~~ and satisfies all of the requirements of this chapter including:
  - a. Successful completion of a medical licensure examination satisfactory to the board;
  - b. Physical, mental, and professional capability for the practice of medicine in a manner acceptable to the board; and
  - c. A history free of any finding by the board, any other state medical licensure board, or any court of competent jurisdiction, of the commission of any act that would constitute grounds for disciplinary action under this chapter; the board may modify this restriction for cause.
2. Graduates of United States and Canadian schools.
  - a. An applicant who is a graduate of an approved medical or osteopathic school located in the United States, its possessions, territories, or Canada, shall present evidence, satisfactory to the board, that the applicant has been awarded a degree of doctor of medicine or doctor of osteopathy from a medical school located in the United States, its possessions, territories, or Canada, approved by the board or by an accrediting body approved by the board at the time the degree was conferred.
  - b. An applicant who is a graduate of an approved medical or osteopathic school located in the United States, its possessions, territories, or Canada, must present evidence, satisfactory to the board, that the applicant has successfully completed one year of postgraduate training in the United States or Canada in a program approved by the board or by an accrediting body approved by the board.
3. Graduates of international schools.
  - a. An applicant who is a graduate of a medical school not located in the United States, its possessions, territories, or Canada, shall present evidence, satisfactory to the board, that the applicant possesses the

degree of doctor of medicine or a board-approved equivalent based on satisfactory completion of educational programs acceptable to the board. Graduates of osteopathic schools located outside the United States are not eligible for licensure.

- b. An applicant who has graduated from a medical school not located in the United States, its possessions, territories, or Canada, must present evidence, satisfactory to the board, that the applicant has successfully completed ~~thirty~~twenty-four months of postgraduate training in a program located in the United States, its possessions, territories, or Canada, and accredited by a national accrediting organization approved by the board or other graduate training approved in advance by the board as meeting standards similar to those of a national accrediting organization. However, if such an applicant has not completed thirty months of postgraduate training in a program approved by the board or by an accrediting body approved by the board, but has met all other licensing requirements and has successfully completed one year of postgraduate training in the United States or Canada in a program approved by the board, and if the board finds that the applicant has other professional experience and training that is substantially equivalent to the last eighteen months of postgraduate training, then the applicant may be deemed eligible for licensure. The board is granted broad discretion in determining whether to apply this exception to the normal licensing requirements. An applicant seeking licensure under this exception must present evidence satisfactory to the board that:
    - (1) The applicant is certified by a specialty board recognized by the American board of medical specialties or by a specialty board recognized by the royal college of physicians and surgeons of Canada; or
    - (2) The applicant has passed the special purpose examination developed by the federation of state medical boards of the United States.
  - c. The applicant shall present evidence satisfactory to the board that the applicant has been awarded a certificate by the educational council for foreign medical graduates. The board may adopt rules establishing specific exceptions to this requirement.
  - d. The applicant has a working ability in the English language sufficient to communicate with patients and physicians and to engage in the practice of medicine.
4. ~~Special license. The board may grant a temporary special license to an applicant who is a graduate of a medical school that is not located in the United States or Canada if that applicant has met all requirements for licensure except those pertaining to postgraduate training; has successfully completed two years of approved postgraduate training in the United States or Canada; and is enrolled in an approved postgraduate training program in this state. This special license is valid only while the licensee continues to be enrolled in an approved postgraduate training program in this state.~~Uniquely qualified license. The board may issue a medical license to an applicant who does not meet all the technical eligibility requirements if the board determines the applicant is uniquely qualified through training or experience or will make a unique or special contribution to the practice of medicine not readily available

to the citizens of the state. The board shall adopt rules for qualifications and factors to be considered under this subsection.

5. An applicant may require an interview before the board for such examination into the applicant's qualifications. The board may adopt rules to issue provisional and temporary licenses to be in effect in the interval between board meetings.

**SECTION 16. AMENDMENT.** Section 43-17-24 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-24. Physicians register/licensure with the board.**

~~On or before the due date established by the board, every person legally licensed to practice medicine within this state~~

1. An applicant shall file with the executive director of the board a registration statement upon blanks prepared and provided by the board completed application and shall pay to the executive director the registration application fee. No person may engage in the practice of medicine in this state without a current registration certificate/license issued by the board.
2. Each licensee shall maintain a permanent electronic mail or mailing address with the board to which all communications from the board to the licensee will be sent. A licensee who changes the individual's electronic mail or mailing address shall notify the board in writing of the new contact information within sixty days.
3. If a licensee fails to notify the board in writing of the changes as required by this section after sixty days, the board may impose upon the licensee a fee not to exceed one hundred dollars and may initiate disciplinary action against the licensee.

**SECTION 17. AMENDMENT.** Section 43-17-25 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-25. Registration/Application fee.**

~~The registration fee for any person licensed to practice medicine individual seeking licensure or renewal in the state must be fixed by regulation of the board. All fees must be paid to and held by the executive director of the board and are subject to disbursement by the board in performing its duties.~~

**SECTION 18. AMENDMENT.** Section 43-17-26.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-26.1. License/Physician license renewals - Late fees.**

~~A physician seeking to renew the annual registration the physician's license who has failed to complete the annual registration process/renewal application within the time specified by the North Dakota board of medicine must be assessed a fee equal up to three times the normal annual registration/licensure fee, in addition to such other penalties as are authorized by law, if that physician is found to have been practicing medicine in this state after the physician's license expired. A physician who is not found to have been practicing medicine in this state may renew a license upon payment of the arrearage and meeting the other requirements of the board. However, a physician whose license lapsed more than three years before that physician~~

petitioned the board for reinstatement must submit a new application for licensure, whether or not that physician has practiced medicine in this state since the physician's license was last current.

**SECTION 19. AMENDMENT.** Section 43-17-27.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-27.1. ContinuingPhysician continuing education requirements.**

1. The board shall promote a high degree of competence in the practice of medicine by establishing rules requiring every physician licensed in the state to fulfill continuing education requirements. Compliance with these rules must be documented at such times and in such manner as is required by the board. Physicians failing to comply with continuing education requirements in the time and manner specified by rule of the board will be assessed a fee up to three times the licensure fee, in addition to such other penalties as are authorized by law.
2. Before a license may be renewed, the licensee~~physician~~ shall submit evidence to the board establishing that all continuing education requirements prescribed by the rules adopted by the board have been met.
3. The board may accept current certification, maintenance of certification, or recertification by a member of the American board of medical specialties, the American osteopathic association, or the royal college of physician and surgeons of Canada in lieu of compliance with continuing education requirements.
4. The board may exempt a physician from the requirements of this section in accordance with rules adopted by the board.
5. Notwithstanding subsection 1, if an individual fails to file a timely response, the board may determine whether the individual's failure to file a timely response to an audit constitutes an admission of noncompliance with this section and whether the individual's license should be subject to action by the board. If the board determines that the individual's failure to file a timely response is an admission of noncompliance and that the individual's license should be subject to action by the board, the board shall hold a hearing in accordance with chapter 28-32 to take any appropriate action.

**SECTION 20.** Section 43-17-27.2 of the North Dakota Century Code is created and enacted as follows:

**43-17-27.2. Record retention requirements.**

1. A licensee shall retain all medical records, unless otherwise appropriately transferred to another licensee or entity, for at least seven years from the last date of service for each patient, except as otherwise required by law.
2. The board may adopt rules to implement record retention and requirements for transfer of medical records for situations in which the licensee sells the licensee's medical practice, departs from the medical practice, or upon licensee death, incapacity, or retirement.

<sup>213</sup> **SECTION 21. AMENDMENT.** Section 43-17-31 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-31. Grounds for disciplinary action.**

1. Disciplinary action may be imposed against a physician upon any of the following grounds:
  - a. The use of any false, fraudulent, or forged statement or document, or the use of any fraudulent, deceitful, dishonest, or immoral practice, in connection with any of the licensing requirements.
  - b. The making of false or misleading statements about the physician's skill or the efficacy of any medicine, treatment, or remedy.
  - c. The conviction of any misdemeanor determined by the board to have a direct bearing upon a person's ability to serve the public as a practitioner of medicine or any felony. A license may not be withheld contrary to the provisions of chapter 12.1-33.
  - d. ~~Habitual use~~Use of alcohol or drugs to such a degree as to interfere with the licensee's ability to safely practice medicine.
  - e. Physical or mental disability materially affecting the ability to perform the duties of a physician in a competent manner.
  - f. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public.
  - g. Obtaining any fee by fraud, deceit, or misrepresentation.
  - h. Aiding or abetting the practice of medicine by an unlicensed, incompetent, or impaired person.
  - i. The violation of any provision of a medical practice act or the rules and regulations of the board, or any action, stipulation, condition, or agreement imposed by the board or its investigative panels.
  - j. The practice of medicine under a false or assumed name.
  - k. The advertising for the practice of medicine in an untrue or deceptive manner.
  - l. The representation to a patient that a manifestly incurable condition, sickness, disease, or injury can be cured.
  - m. The willful or negligent violation of the confidentiality between physician and patient, except as required by law.
  - n. The failure of a doctor of osteopathy to designate that person's school of practice in the professional use of that person's name by such terms as "osteopathic physician and surgeon", "doctor of osteopathy", "D.O.", or similar terms.

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<sup>213</sup> Section 43-17-31 was also amended by section 10 of Senate Bill No. 2150, chapter 122.

- o. Gross negligence in the practice of medicine.
- p. Sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine.
- q. The prescription, sale, administration, distribution, or gift of any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than medically accepted therapeutic purposes.
- r. The payment or receipt, directly or indirectly, of any fee, commission, rebate, or other compensation for medical services not actually or personally rendered, or for patient referrals; this prohibition does not affect the lawful distributions of professional partnerships, corporations, limited liability companies, or associations.
- s. The failure to comply with the reporting requirements of section 43-17.1-05.1.
- t. The failure to transfer medical records to another physician or to supply copies of those records to the patient or to the patient's representative when requested to do so by the patient or the patient's designated representative, except if the disclosure is otherwise limited or prohibited by law. A reasonable charge for record copies may be assessed.
- u. A continued pattern of inappropriate care as a physician, including unnecessary surgery.
- v. The use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine.
- w. The prescribing, selling, administering, distributing, or giving to oneself or to one's spouse or child any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug.
- x. The violation of any state or federal statute or regulation relating to controlled substances.
- y. The imposition by another state or jurisdiction of disciplinary action against a license or other authorization to practice medicine based upon acts or conduct by the physician that would constitute grounds for disciplinary action as set forth in this section. A certified copy of the record of the action taken by the other state or jurisdiction is conclusive evidence of that action.
- z. The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.
- ~~aa. The failure to properly monitor a fluoroscopy technologist or an emergency medical technician.~~
- ~~bb. The failure to furnish the board or the investigative panel, their investigators, or representatives information legally requested by the board or the investigative panel.~~

- ee.bb. The performance of an abortion on a pregnant woman prior to determining if the unborn child the pregnant woman is carrying has a detectable heartbeat, as provided in subsection 1 of section 14-02.1-05.1.
- ed.cc. Noncompliance with the physician health program established under chapter 43-17.3.

2. The board shall keep a record of all of its proceedings in the matter of suspending, revoking, or refusing licenses together with the evidence offered.

**SECTION 22. AMENDMENT.** Section 43-17-32.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-32.1. Temporary suspension - Appeal.**

1. When, based on verified evidence, the board determines by a clear and convincing standard that the evidence presented to the board indicates that the continued practice by the physicianlicensee would create a significant risk of serious and ongoing harm to the public while a disciplinary proceeding is pending, and that immediate suspension of the physician's license is required to reasonably protect the public from that risk of harm, the board may order a temporary suspension ex parte. For purposes of this section, "verified evidence" means testimony taken under oath and based on personal knowledge. The board shall give prompt written notice of the suspension to the physicianlicensee, 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 physicianlicensee.
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, shall be taken against the physicianlicensee 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 physicianlicensee is entitled to a continuance of the thirty-day period upon request for a period determined by the hearing officer.
4. The physicianlicensee may appeal the ex parte temporary suspension order prior to the full hearing. For purposes of appeal, the district court shall decide whether the board acted reasonably or arbitrarily. The court shall give priority to the appeal for prompt disposition thereof.
5. Any medical record of a patient, or other document containing personal information about a patient, which is obtained by the board is an exempta confidential record as defined in section 44-04-17.1.

**SECTION 23. AMENDMENT.** Section 43-17-37 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-37. Emergency treatment by resident physicianlicensee.**

Any ~~physician or surgeon~~individual licensed under the provisions of this chapter who in good faith renders in this state emergency care at the scene of the emergency is expected to render only such emergency care as in the ~~person's~~individual's judgment is at the time indicated.

**SECTION 24. AMENDMENT.** Section 43-17-38 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-38. Emergency treatment by nonresident ~~physician~~licensee.**

Any ~~physician or surgeon~~individual duly licensed to practice as a ~~physician or surgeon~~ in another state of the United States who renders in this state emergency care at the scene of the emergency may only be held to the degree of care as specified in section 43-17-37, and may not be deemed to be practicing medicine within this state as contemplated by this chapter.

**SECTION 25.** A new subsection to section 43-17-41 of the North Dakota Century Code is created and enacted as follows:

Reports made under this section are exempt records as defined by section 44-04-17.1.

**SECTION 26. AMENDMENT.** Section 43-17-43 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-43. Topical fluoride varnish.**

A ~~licensed physician or physician assistant~~licensee may apply topical fluoride varnish to an individual in accordance with rules adopted by the board.

**SECTION 27. AMENDMENT.** Section 43-17-46 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-46. Payment of fees under the interstate medical licensure compact.**

1. Fees levied under subsection 1 of article XIII of the interstate medical licensure compact by the interstate medical licensure compact commission to the state of North Dakota must be paid by the board through the board's funding mechanism, and the board may not request funds deposited in the general fund for the fee. A physician granted licensure through the interstate medical licensure compact who fails to complete the addendum questions within the time specified by rule of the board must be assessed a fee up to three times the normal licensure fee, in addition to such other penalties as authorized by law.
2. Notwithstanding subsection 1, if an individual fails to timely submit the addendum questionnaire required by rule of the board, the board may determine whether the individual's failure to file a timely response constitutes an admission of noncompliance with this section and whether the license should be subject to action by the board. If the board determines the individual's failure to file a timely response is an admission of noncompliance and the individual's license should be subject to action by the board, the board shall hold a hearing in accordance with chapter 28-32 to take any appropriate action.

**SECTION 28. AMENDMENT.** Section 43-17.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-17.1-01. Definitions.**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota board of medicine.
2. "Licensee" means an individual who is under the jurisdiction of the board of medicine.
3. "Physician" means a person engaged in the practice of medicine in this state pursuant to the provisions of chapter 43-17.

**SECTION 29. AMENDMENT.** Section 43-17.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-17.1-02. Investigative panels of the board.**

1. For the purpose of investigating complaints or other information that might give rise to a disciplinary proceeding against a ~~physician or physician assistant licensee~~, the ~~president~~executive director of the board shall designate two investigative panels, each composed of six members of the board. Five members of each panel must be physician members of the board. One member of each panel must be a public member of the board. One member of each panel must be a physician assistant.
2. Each investigative panel shall select a chairman and a vice chairman from its own members ~~and a secretary who may or may not be a member of the panel and who shall keep minutes of all meetings thereof.~~
3. Each investigative panel may engage and share information with investigators, medical experts, and such other experts as the panel in its discretion determines to be necessary to accomplish its purposes. ~~The attorney general shall provide counsel to the investigative panels, but an investigative panel may employ special counsel in any proceeding wherein it decides it is advisable.~~Information shared to such entities or individuals remains confidential in the possession of the entities.
4. Cases for investigation must be assigned to each investigative panel by the ~~president~~executive director of the board.

**SECTION 30. AMENDMENT.** Section 43-17.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-17.1-05. Complaints.**

1. Any person may make or refer written complaints to the investigative panels with reference to the acts, activities, or qualifications of any ~~physician or physician assistant licensed to practice in this state~~licensee, or to request that an investigative panel review the qualifications of any ~~physician or physician assistant licensee~~ to continue to practice in this state. Any person that, in good faith, makes a report to the investigative panels under this section is not subject to civil liability for making the report. For purposes of any civil proceeding, the good faith of any person that makes a report pursuant to this section is presumed. Upon receipt of any complaint or request, the investigative panel shall conduct the investigation as the panel deems necessary to determine whether any ~~physician or physician assistant licensee~~

has committed any of the grounds for disciplinary action provided for by law. Upon completion of the investigation of the investigative panel, the investigative panel shall make a finding that the investigation discloses that:

- a. There is insufficient evidence to warrant further action;
  - b. The conduct of the ~~physician or physician assistant~~ licensee does not warrant further proceedings but the investigative panel determines possible errant conduct occurred that could lead to significant consequences if not corrected. In such a case, a confidential letter of concern may be sent to the ~~physician or physician assistant~~ licensee; or
  - c. The conduct of the ~~physician or physician assistant~~ licensee indicates the ~~physician or physician assistant~~ licensee may have committed any of the grounds for disciplinary action provided for by law and which warrants further proceedings.
2. If the investigative panel determines a formal hearing should be held to determine whether any ~~licensed physician or physician assistant~~ licensee has committed any of the grounds for disciplinary action provided for by law, the panel shall inform the respondent ~~physician or physician assistant~~ licensee involved of the specific charges to be considered by serving upon that individual a copy of a formal complaint filed with the board for disposition pursuant to the provisions of chapter 28-32. The board members who have served on the investigative panel may not participate in any proceeding before the board relating to the complaint. The complaint must be prosecuted before the board by the attorney general or one of the attorney general's assistants.
  3. If an investigative panel finds there are insufficient facts to warrant further investigation or action, the complaint must be dismissed and the matter is closed. The investigative panel shall provide written notice to the person filing the original complaint and the individual who is the subject of the complaint of the investigative panel's final action or recommendations, if any, concerning the complaint.

**SECTION 31. AMENDMENT.** Section 43-17.1-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-17.1-05.1. Reporting requirements - Penalty.**

1. A ~~physician, a physician assistant~~ licensee, a health care institution in the state, a state agency, or a law enforcement agency in the state having actual knowledge that a ~~licensed physician or physician assistant~~ licensee may have committed any of the grounds for disciplinary action provided by law or by rules adopted by the board ~~promptly~~ shall report that information in writing to the investigative panel of the board within thirty days from the date of occurrence or action. A medical licensee or any institution from which the medical licensee voluntarily resigns or voluntarily limits the licensee's staff privileges shall report that licensee's action to the investigative panel of the board if that action occurs while the licensee is under formal or informal investigation by the institution or a committee of the institution for any reason related to possible medical incompetence, unprofessional conduct, or mental or physical impairment within thirty days.
2. In addition to the reporting requirements in subsection 1, a licensee shall report the following to the board within thirty days:

- a. A citation, charge, arrest, or conviction of any violation of law, other than minor traffic citations.
  - b. A malpractice judgment or settlement made on behalf of an individual licensee.
  - c. Discipline by a licensing board, agency, or professional association.
  - d. An action affecting or limiting privileges or credentials.
  - e. A health care facility restriction of privileges due to practice concerns or discipline for reasons relating to the licensee's clinical competence which results in a limitation, restriction, suspension, revocation, relinquishment, or nonrenewal of the licensee's privileges to avoid an investigation or other disciplinary action.
  - f. A condition that impairs the licensee's ability to practice the profession in a competent, ethical, or professional manner. If the licensee is under treatment and able to practice in a competent, ethical, and professional manner, the condition does not need to be reported. A licensee also does not need to report under this section if the licensee has a current contract with the North Dakota professional health program and is in compliance with program requirements.
3. Upon receiving a report concerning a licensee an investigative panel shall, or on its own motion an investigative panel may, investigate any evidence that appears to show a licensee is or may have committed any of the grounds for disciplinary action provided by law or by rules adopted by the board.
- 3-4. A person required to report under this section that makes a report in good faith is not subject to criminal prosecution or civil liability for making the report. For purposes of any civil proceeding, the good faith of any person that makes a report pursuant to this section is presumed. A physician who obtains information in the course of a physician-patient relationship in which the patient is another physician is not required to report if the treating physician successfully counsels the other physician to limit or withdraw from practice to the extent required by the impairment. A physician who obtains information in the course of a professional peer review pursuant to chapter 23-34 is not required to report pursuant to this section. A physician who does not report information obtained in a professional peer review is not subject to criminal prosecution or civil liability for not making a report. For purposes of this section, a person has actual knowledge if that person acquired the information by personal observation or under circumstances that cause that person to believe there exists a substantial likelihood that the information is correct.
- 4-5. An agency or health care institution that violates this section is guilty of a class B misdemeanor. A ~~physician or physician assistant~~ licensee who violates this section is subject to ~~administrative~~ disciplinary action by the board as specified by law or by administrative rule.

**SECTION 32. AMENDMENT.** Section 43-17.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-17.1-06. Powers of the board's investigative panels.**

The board's investigative panels may:

1. Subpoena witnesses and ~~physician and hospital~~medical or other records relating to the practice of any ~~physician or physician assistant~~licensee under investigation. The confidentiality of the records by any other statute or law does not affect the validity of an investigative panel's subpoena nor the admissibility of the records in board proceedings; however, the proceedings and records of a committee which are exempt from subpoena, discovery, or introduction into evidence under chapter 23-34 are not subject to this subsection.
2. Hold preliminary hearings.
3. Upon probable cause, require any ~~physician or physician assistant~~licensee under investigation to submit to a physical, psychiatric, or competency examination or an addiction evaluation.
4. Appoint special masters to conduct preliminary hearings.
5. Employ independent investigators if necessary.
6. Hold confidential conferences with any complainant or any ~~physician or physician assistant~~licensee with respect to any complaint.
7. File a formal complaint against any ~~licensed physician or physician assistant~~licensee with the board.

**SECTION 33. AMENDMENT.** Section 43-17.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-17.1-08. Communication to investigative panel privileged.**

1. Communications to the investigative panels and their agents are privileged and confidential, and no member of the investigative panels nor any of their agents may be compelled to testify with respect thereto in any proceedings except in formal proceedings conducted before the board.
2. All records of the investigative panels, except their financial records, are confidential. Only the formal disciplinary documents issued pursuant to chapter 28-32 are considered open records, including the formal complaint, finding of facts, conclusions of law, and order. If a disciplinary action is resolved by settlement agreement, the fully executed agreement is a public record.
3. Notwithstanding the provisions of this section, if an investigative panel determines that the records of the investigative panel disclose a possible violation of state or federal criminal law, the investigative panel may provide the records to the appropriate law enforcement agency.
4. Investigative information in the possession of the board and investigatory panels which relates to licensee discipline may be disclosed to the appropriate licensing authorities within this state, the appropriate licensing authority in another state, or as permitted under chapter 43-17.4, if the receiving entity has statutory protections in place to protect the records from disclosure.

**SECTION 34. REPEAL.** Sections 43-17-21 and 43-17-30 of the North Dakota Century Code are repealed.

Approved March 29, 2023

Filed March 30, 2023

## CHAPTER 383

### SENATE BILL NO. 2221

(Senators Dwyer, Hogue, K. Roers)  
(Representatives Lefor, Rohr, Weisz)

AN ACT to create and enact section 43-58-08.1 and three new sections to chapter 43-58 of the North Dakota Century Code, relating to the regulation of the practice of naturopathic medicine; to amend and reenact section 43-17-03, subsection 2 of section 43-57-01, section 43-57-03, subsection 1 of section 43-57-06, subsection 2 of section 43-57-07, section 43-57-11, subsection 2 of section 43-58-01, and sections 43-58-05, 43-58-08, and 43-58-09 of the North Dakota Century Code, relating to the regulation of the practice of naturopathic medicine; and to provide a penalty.

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

<sup>214</sup> **SECTION 1. AMENDMENT.** Section 43-17-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-17-03. North Dakota board of medicine - How appointed - Qualifications.**

1. The governor shall appoint a North Dakota board of medicine consisting of ~~thirteen~~fifteen members, ~~ten~~ physicians, nine of whom are doctors of medicine; and one of whom is a doctor of osteopathy, ~~one of whom is a two~~ physician assistant~~assistants~~, one naturopath, and ~~two of whom are designated as public members~~. If no osteopathic physician is qualified and willing to serve, any qualified physician may be appointed in place of the osteopathic physician.
2. Each physician member must:
  - a. Be a practicing physician of integrity and ability.
  - b. Be a resident of and duly licensed to practice medicine in this state.
  - c. Be a graduate of a medical or osteopathic school of high educational requirements and standing.
  - d. Have been engaged in the active practice of the physician's profession within this state for a period of at least five years.
3. Each public member of the board must:
  - a. Be a resident of this state.
  - b. Be at least twenty-one years of age.

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<sup>214</sup> Section 43-17-03 was also amended by section 7 of Senate Bill No. 2115, chapter 382.

- c. Not be affiliated with any group or profession that provides or regulates health care in any form.
4. The Each physician assistant member of the board must:
  - a. Be a practicing physician assistant of integrity and ability.
  - b. Be a resident of and be duly licensed to practice as a physician assistant in this state.
  - c. Have been engaged in the active practice as a physician assistant within this state for a period of at least five years.
5. The naturopath member must:
  - a. Be a practicing naturopath of integrity and ability.
  - b. Be a resident of and duly licensed to practice as a naturopath in this state.
  - c. Have been engaged in the active practice as a naturopath within this state for a period of at least five years.
6. An individual appointed to the board shall qualify by taking the oath required of civil officers.

**SECTION 2. AMENDMENT.** Subsection 2 of section 43-57-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Licensee" means an individual licensed by the board under this chapter and under chapter ~~43-58~~, 43-59, 43-61, or 43-64.

**SECTION 3. AMENDMENT.** Section 43-57-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-57-03. Powers and duties of board.**

1. The board shall adopt rules:
  - a. To administer and enforce this chapter and chapters ~~43-58~~, 43-59, 43-61, and 43-64;
  - b. That specify the scope of practice, which must be consistent with the required education for each profession regulated by the board;
  - c. To establish any exemptions from licensure;
  - d. That endorse equivalent licensure examinations of another state or foreign country and which may include licensure by reciprocity;
  - e. That establish educational standards for each profession regulated by the board as appropriate; and
  - f. That set fees for licensure, which may include:
    - (1) Application fee;

- (2) License fee;
  - (3) Renewal fee;
  - (4) Late fee;
  - (5) Administrative fees; and
  - (6) Continuing education fees.
2. The board shall produce an annual list of the names and level of licensure of all individuals licensed by the board and make the list available upon request.
  3. The board may employ staff and provide for staff compensation.
  4. The board shall receive all moneys collected under this chapter and chapters ~~43-58~~, 43-59, 43-61, and 43-64 and shall deposit and disburse all fees and moneys collected in accordance with section 54-44-12.
  5. The board may establish continuing education requirements for license renewal.
  6. The board may adopt a code of ethics for each profession regulated by the board.
  7. The board may adopt rules allowing students to practice under licensed supervision.

**SECTION 4. AMENDMENT.** Subsection 1 of section 43-57-06 of the North Dakota Century Code is amended and reenacted as follows:

1. If the board determines an applicant possesses the qualifications required under this chapter and under chapter ~~43-58~~, 43-59, 43-61, or 43-64, the board shall issue a license to the applicant.

**SECTION 5. AMENDMENT.** Subsection 2 of section 43-57-07 of the North Dakota Century Code is amended and reenacted as follows:

2. A license issued under chapter ~~43-58~~ or 43-59 expires on December thirty-first of every odd-numbered year. A license issued under chapter 43-61 or 43-64 expires on December thirty-first of every even-numbered year.

**SECTION 6. AMENDMENT.** Section 43-57-11 of the North Dakota Century Code is amended and reenacted as follows:

**43-57-11. Enforcement - Penalty.**

A person that violates this chapter or chapter ~~43-58~~, 43-59, 43-61, or 43-64 is guilty of a class B misdemeanor. In addition to the criminal penalties provided under this section, the civil remedy of injunction is available to restrain and enjoin any violation of this chapter or chapter ~~43-58~~, 43-59, 43-61, or 43-64 without proof of actual damages sustained by any person.

**SECTION 7. AMENDMENT.** Subsection 2 of section 43-58-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Board" means the ~~state~~North Dakota board of integrative ~~health care~~medicine created under chapter ~~43-57~~43-17.

**SECTION 8. AMENDMENT.** Section 43-58-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-58-05. Application for licensure.**

1. An applicant for naturopathic licensure shall file an application on forms provided by the board showing to the board's satisfaction that the applicant is ~~of good moral character and~~ has satisfied all of the requirements of this chapter and ~~chapter 43-57~~set by rule of the board, including:
  - a. Successful graduation of an approved naturopathic medical college;
  - b. Successful completion of an examination prescribed or endorsed by the board, such as part I and part II of the naturopathic physicians licensing examinations;
  - c. Physical, mental, and professional capability for the practice of naturopathic medicine in a manner acceptable to the board; and
  - d. A history free of any finding by the board, any other state licensure board, or any court of competent jurisdiction of the commission of any act that would constitute grounds for disciplinary action under this chapter and ~~chapter 43-57~~set by rule of the board. The board may modify this restriction for cause.
2. The application must be accompanied by the board-established license fees and application fees and by the documents, affidavits, and certificates necessary to establish that the applicant possesses the necessary qualifications.

**SECTION 9. AMENDMENT.** Section 43-58-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-58-08. Practice of naturopathic health care.**

1. A naturopath may practice naturopathic medicine as a limited practice of the healing arts as exempted under section 43-17-02. A naturopath may not:
  - a. Prescribe, dispense, or administer any prescription drug without obtaining a license endorsement under this chapter;
  - b. Administer ionizing radioactive substances for therapeutic purposes;
  - c. Perform a surgical procedure; or
  - d. Claim to practice any licensed health care profession or system of treatment other than naturopathic medicine unless holding a separate license in that profession. A naturopath may not hold out to the public that the naturopath is a primary care provider.
2. A naturopath may prescribe and administer for preventive and therapeutic purposes a prescriptive device and the following nonprescriptive natural therapeutic substances, drugs, and therapies:

- a. Food, vitamins, minerals, dietary supplements, enzymes, botanical medicines, and homeopathic preparations;
  - b. Topical drugs, health care counseling, nutritional counseling and dietary therapy, naturopathic physical applications, and therapeutic devices; and
  - c. Barrier devices for contraception.
3. A naturopath:
- a. May prescribe, dispense, administer, and procure drugs and medical devices as authorized under this chapter.
  - b. May plan and initiate a therapeutic regimen of ordering and prescribing nonpharmacological interventions.
  - c. May not prescribe or dispense schedule I through V substances as designated by the federal drug enforcement administration except for testosterone and may prescribe and dispense all other legend drugs authorized by a formulary approved by the board and set forth in rule.
  - d. May not dispense a drug as authorized under this chapter unless pharmacy services are not available or if an emergency exists.
  - e. May request, receive, and sign for a professional sample of a drug authorized to be prescribed under this chapter and may distribute the sample to a patient.
  - f. If prescribing or dispensing a drug as authorized by this chapter, shall register, if appropriate, with the federal drug enforcement administration and shall comply with appropriate state and federal laws, including participating in the prescription drug monitoring program under chapter 19-03.5.
4. A naturopath may perform or order for diagnostic purposes a physical or official examination, ultrasound, phlebotomy, clinical laboratory test or examination, physiological function test, and any other noninvasive diagnostic procedure commonly used by physicians in general practice and as authorized by the board.

**SECTION 10.** Section 43-58-08.1 of the North Dakota Century Code is created and enacted as follows:

**43-58-08.1. Endorsement for prescribing authority.**

1. A naturopath may not prescribe, dispense, or administer a prescription medication without first obtaining an endorsement for licensure.
2. The naturopath first must apply for a limited endorsement with the board in which the naturopath enters a written collaborative agreement with a supervising physician licensed under chapter 43-17, who will review the first one hundred prescriptions issued by the naturopath or twelve months of prescribing, whichever occurs first. The supervising physician shall possess an unencumbered license and have been prescribing and administering prescription drugs without limitation for at least five years in the state. The supervising physician shall evaluate the naturopath's ability to safely prescribe

and administer prescription drugs within the naturopath's scope of practice and to comply with federal and state laws. The written collaborative agreement must address the requirements of this subsection and be provided to the board along with the application for endorsement. The board, by rule, further shall define the terms of the supervising physician's role in reviewing the naturopath's prescribing practices.

3. A naturopath who satisfies the requirements of subsection 2 shall notify the board in writing with verification from the supervising physician that this requirement has been met. Upon verification subsection 2 has been met, and the naturopath successfully completed the pharmacology elective examination approved by the board, the board shall issue the naturopath an endorsement to prescribe independently.
4. The board may waive the requirements of section 2 and examination under section 3 if a naturopath shows the naturopath has substantial experience in prescribing prescription medications under the laws of another jurisdiction that has standards and qualifications for a naturopath to prescribe prescription medications at least equal to those required under this chapter.
5. To maintain the endorsements provided under this section, the naturopath shall obtain five hours of continuing education hours annually regarding pharmacology of testosterone and legend drugs.

**SECTION 11. AMENDMENT.** Section 43-58-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-58-09. Public health duties.**

A naturopath has the same powers and duties as a licensed physician with regard to public health laws, reportable diseases and conditions, communicable disease control and prevention, recording of vital statistics, health and physical examinations, and local boards of health, except that the authority and responsibility are limited to activities consistent with the scope of practice established under this chapter and ~~chapter 43-57.~~

**SECTION 12.** A new section to chapter 43-58 of the North Dakota Century Code is created and enacted as follows:

**Powers and duties of the board.**

1. The board shall adopt rules:
  - a. To administer and enforce this chapter;
  - b. To specify the scope of practice, which must be consistent with the required education;
  - c. To establish any exemptions from licensure;
  - d. That endorse equivalent licensure examinations of another state or foreign country and which may include licensure by reciprocity;
  - e. That establish appropriate educational standards;
  - f. To establish renewal requirements; and

- g. That set required fees, including:
- (1) An application fee;
  - (2) A license fee;
  - (3) A renewal fee;
  - (4) A late fee;
  - (5) Administrative fees; and
  - (6) Continued education fees.
2. The board may establish continuing education requirements for license renewal.
3. The board may adopt a code of ethics for naturopaths.
4. If the number of naturopath licensees in the state increases to at least one hundred, the board shall consider whether to introduce legislation creating an independent board to regulate the profession.

**SECTION 13.** A new section to chapter 43-58 of the North Dakota Century Code is created and enacted as follows:

**Discipline.**

1. The board may take disciplinary action against a licensee by any of the following means:
- a. Revocation of license;
  - b. Suspension of license;
  - c. Probation;
  - d. Imposition of stipulations, limitations, or conditions relating to the licensee's practice;
  - e. Letter of censure;
  - f. Require the licensee to provide free public or charitable service for a defined period; and
  - g. Impose fines, not to exceed five thousand dollars for any single disciplinary action.
2. The board may impose disciplinary action against a licensee upon any of the following grounds:
- a. The use of any false, fraudulent, or forged statement or document, or the use of any fraudulent, deceitful, dishonest, or immoral practice, in connection with any of the licensing requirements.

- b. The making of false or misleading statements about the licensee's skill or the efficacy of any medicine, treatment, or remedy.
- c. The conviction of any misdemeanor determined by the board to have a direct bearing upon the licensee's ability to serve the public or any felony. A license may not be withheld contrary to the provisions of chapter 12.1-33.
- d. The use of alcohol or drugs to such a degree as to interfere with the licensee's ability to safely practice.
- e. The presence of a physical or mental disability materially affecting the ability to perform the duties of the profession in a competent manner.
- f. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public.
- g. Obtaining any fee by fraud, deceit, or misrepresentation.
- h. Aiding or abetting the practice of the profession by an unlicensed, incompetent, or impaired individual.
- i. The violation of any provision of this chapter or the rules of the board, or any action, stipulation, condition, or agreement imposed by the board or the board's investigative panels.
- j. The practice of the profession under a false or assumed name.
- k. The advertising for the practice of the profession in an untrue or deceptive manner.
- l. The representation to a patient that a manifestly incurable condition, sickness, disease, or injury can be cured.
- m. The willful or negligent violation of the confidentiality between licensee and patient, except as required by law.
- n. A finding of negligence in the practice of the profession.
- o. A finding of abuse, misconduct, or exploitation related to the licensee's practice of the profession.
- p. A continued pattern of inappropriate care.
- q. The imposition by another state or jurisdiction of disciplinary action against a license or other authorization to practice based upon acts or conduct by the licensee which would constitute grounds for disciplinary action as set forth in this section. A certified copy of the record of the action taken by the other state or jurisdiction is conclusive evidence of that action.
- r. The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.
- s. The representation of oneself to be a physician.

- t. The prescription, sale, administration, distribution, or gift of any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than medically accepted therapeutic purposes.
- u. The use of any false, fraudulent, or deceptive statement in any document connected with the performance of the licensee's duties.
- v. The prescribing, selling, administering, distributing, or giving to the naturopath or to the naturopath's spouse or child any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug.
- w. The violation of any state or federal statute or regulation relating to controlled substances.
- x. The failure to furnish the board or the investigative panels or the board's or investigative panel's investigators or representatives, information legally requested by the board or the investigative panel.
- y. A finding of noncompliance with the physician health program established under chapter 43-17.3.

**SECTION 14.** A new section to chapter 43-58 of the North Dakota Century Code is created and enacted as follows:

**Enforcement - Penalty.**

An individual who practices naturopathic health care in this state without complying with the provisions of this chapter, and an individual who violates any of the provisions of this chapter for which another penalty is not specified, is guilty of a class B misdemeanor. In addition to the criminal penalties provided under this section, the civil remedy of injunction is available to restrain and enjoin a violation of this chapter without proof of actual damages sustained by any person.

Approved April 4, 2023

Filed April 5, 2023

## CHAPTER 384

### SENATE BILL NO. 2148

(Senators Sickler, Barta, K. Roers)  
(Representative Strinden)

AN ACT to amend and reenact section 43-17-42 of the North Dakota Century Code, relating to the corporate practice of medicine.

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

**SECTION 1. AMENDMENT.** Section 43-17-42 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-42. Employment of physicians by hospitals —~~Employment of physicians by, nonprofit entities, and charitable trusts for hyperbaric oxygen therapy.~~**

1. Notwithstanding any other provision of law, a hospital licensed under chapter 23-16, nonprofit entity, or charitable trust may employ directly or indirectly a physician if the employment relationship between the physician and hospital, nonprofit entity, or charitable trust is evidenced by a written contract. The written contract must contain language to the effect the hospital's employment relationship with the physician may not affect the exercise of the physician's independent judgment in the practice of medicine, and the physician's independent judgment in the practice of medicine is in fact unaffected by the physician's employment relationship with the hospital, nonprofit entity, or charitable trust. Under this subsection ~~a section the~~ hospital, nonprofit entity, or charitable trust is not engaged in the practice of medicine.

2. ~~Notwithstanding any other provision of law, a nonprofit entity or charitable trust may employ directly or indirectly a physician to conduct hyperbaric oxygen therapy if the employment relationship between the physician and nonprofit entity or charitable trust is evidenced by a written contract. The written contract must contain language to the effect the nonprofit entity's or charitable trust's employment relationship with the physician may not affect the exercise of the physician's independent judgment in the practice of medicine, and the physician's independent judgment in the practice of medicine is in fact unaffected by the physician's employment relationship with the nonprofit entity or charitable trust. Under this subsection a nonprofit entity or charitable trust is not engaged in the practice of medicine.~~

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 385

### SENATE BILL NO. 2098

(Workforce Development Committee)  
(At the request of the North Dakota Board of Medicine)

AN ACT to amend and reenact sections 43-17.3-01, 43-17.3-02, 43-17.3-03, and 43-17.3-04, subsection 1 of section 43-17.3-05, and section 43-17.3-07 of the North Dakota Century Code, relating to the physician health program.

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

**SECTION 1. AMENDMENT.** Section 43-17.3-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-17.3-01. Definitions.**

As used in this chapter:

1. "Board" means the North Dakota board of medicine.
2. "Committee or designated agency" means a committee or delegated agency of the physician health program which is composed of physicians and other professionals who have expertise in the areas of alcoholism, drug abuse, or mental illness and which is designated by the physician health program to perform any or all of the activities set forth in section 43-17.3-02 pursuant to agreement with the board.
3. "Impairment" means the presence of any physical, mental, or behavioral disorder or pattern of alcohol or substance ~~abuse~~use which interferes with a licensee's ability to engage safely in professional activities.
4. "Licensee" means a physician or other health professional under the jurisdiction of the board, and includes an applicant for licensure or regulation by the board.
5. "Participant" means an individual enrolled in the physician health program.
6. "Physician health program" or "program" means a board-sanctioned program for the detection, intervention, and monitoring of licensees with conditions that could result in impairment.
7. "Student" means an individual studying under a medical doctor program or physician assistant program in this state.
- ~~6-8.~~ "Treatment plan" means a plan of care, rehabilitation, monitoring and maintenance, followup, or aftercare services or combination of any of these services provided by an organization or by an individual authorized by the board or the physician health program to provide such services for a licensee taking part in the physician health program.

**SECTION 2. AMENDMENT.** Section 43-17.3-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-17.3-02. Physician health program.**

1. The board may enter an agreement with the physician health program for the program to undertake those functions and responsibilities specified in the agreement. The functions and responsibilities of the agreement may include any or all of the following:
  - a. Contracting with agencies or providers of diagnostic, monitoring, or treatment services;
  - b. Receiving and evaluating reports of licensees or students who may be experiencing potentially impairing conditions;
  - c. Intervening in cases in which a licensee or student is determined to be in need of treatment;
  - d. Referring licensees or students to appropriate services;
  - e. Monitoring the treatment and aftercare services provided to licensees or students;
  - f. Educating licensees, students, and the public about the functions of the program and the program's relationship to the board; and
  - g. Performing other activities as agreed upon by the board and the physician health program.
2. The board may participate, through its licensing fees or other specified funds, in the funding of the physician health program.

**SECTION 3. AMENDMENT.** Section 43-17.3-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-17.3-03. Physician health program requirements.**

In consultation with the board, the physician health program shall develop procedures for:

1. Periodic reporting of statistical information regarding physician health program activity.
2. Periodic disclosure and joint review of information the board deems appropriate regarding reports received, contacts of investigations made, and the disposition of each case. Except as expressly provided under this chapter, the physician health program may not disclose any personally identifiable information about licensee participants other than board-ordered participants.
3. Immediate reporting to the board or governing institution the identity and results of any contact or investigation concerning an impaired licensee or student who is believed to constitute an imminent danger to the public or to the licensee individual.

4. Reporting a licensee to the board, or student to the appropriate governing institute, in a timely fashion, the identity and results of any contact or investigation concerning a potentially impaired licensee/participant:
  - a. Who refuses to cooperate with the program;
  - b. Who refuses to submit to evaluation or treatment;
  - c. Who is not in compliance with a contractual treatment plan; or
  - d. Whose possible impairment is not substantially alleviated through treatment and:
    - (1) Who the program determines is unable to practice professionally with reasonable skill and safety by reason of illness related to the abuse of alcohol or other substances or as a result of any physical or mental condition; or
    - (2) Who may pose a threat to the health or safety of any individual.
5. Reporting to the board, in a timely fashion, the identity of any licensee participant regarding whom the program learns of the filing of any disciplinary charges or actions or violations of chapter 43-17.
6. Entering contractual agreements with each participant in the program which make clear the program procedures, the responsibilities of program participants, and the consequences of noncompliance with the program or with contractual agreements, including the program's reporting obligations to the board.
7. A policy by which a participant may obtain a second opinion review of recommendations by the program regarding assessment, monitoring, or treatment.

**SECTION 4. AMENDMENT.** Section 43-17.3-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-17.3-04. Evaluation.**

If the board determines a licensee currently exhibits possible impairment, the board may direct that an evaluation of the licensee be ~~conducted~~facilitated by the physician health program or by the committee or designated agency for the purpose of determining whether there is a current need for treatment or monitoring of the licensee to assure the licensee is able to practice safely. The physician health program shall report the findings of this evaluation to the board. ~~As a condition of application, every applicant for initial licensure or renewal of licensure shall agree to submit to such an evaluation for cause within a specified time frame, and to the release of the results of the evaluation to the board.~~

**SECTION 5. AMENDMENT.** Subsection 1 of section 43-17.3-05 of the North Dakota Century Code is amended and reenacted as follows:

1. A licensee or student may voluntarily self-refer or self-report to the physician health program or the board ~~that the licensee may have~~for a potentially impairing condition.

**SECTION 6. AMENDMENT.** Section 43-17.3-07 of the North Dakota Century Code is amended and reenacted as follows:

**43-17.3-07. Confidentiality of records.**

1. Notwithstanding section 44-04-18, except as otherwise provided in this chapter, all physician health program records containing identifying information about a licensee participant are confidential and may not be disclosed:
  - a. To any third person, unless disclosure is reasonably necessary for the accomplishment of the purposes of intervention, rehabilitation, referral assistance, or support services; or
  - b. In any legal or administrative proceeding, unless privilege or disclosure is otherwise required by law, requested by the board for formal disciplinary action, or regarding participant noncompliance with the program.
2. Except as provided under this section, a staff member handling records for administrative purposes; a person engaged by the program to perform evaluations, monitoring, or followup; and a person in attendance at any meeting of a physician health program or of a committee or designated agency may not be required to testify as to the content of any findings, committee discussion, or proceedings, unless requested by the board for a disciplinary proceeding or regarding participant noncompliance with the program.

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 386

### HOUSE BILL NO. 1104

(Industry, Business and Labor Committee)

(At the request of the State Board of Registration for Professional Engineers and Land Surveyors)

AN ACT to amend and reenact sections 43-19.1-02, 43-19.1-09, 43-19.1-10, 43-19.1-11, 43-19.1-14, 43-19.1-15, 43-19.1-18, 43-19.1-19, 43-19.1-20, 43-19.1-22, 43-19.1-24, 43-19.1-26, and 43-19.1-31 of the North Dakota Century Code, relating to the registration and regulation of professional engineers and land surveyors.

#### 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 otherwise requires:

1. "Board" means the state board of registration for professional engineers and land surveyors.
2. "Engineer" means a professional engineer.
3. "Engineer intern" means 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. "Engineering surveys" means all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, which include locating or laying out alignments, positions, or elevations for the construction of fixed works. The term does not include the surveying of real property for the establishment of land boundaries, rights of way, easements, and the dependent or independent surveys or resurveys of the public land survey system.
5. "Executive director" means the individual hired by the board to perform the duties outlined in this chapter or such other duties as directed by the board.
6. "Land surveyor" means an individual engaged in the practice of land surveying.
- ~~6-7.~~ "Land surveyor intern" means 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.

7-8. "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 if the person practices any branch of the profession of engineering; if the person, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents that the person is an engineer 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 if the person holds out as able to perform, or does perform any engineering service or work or any other service that is recognized as engineering, for a valuable consideration for others, including the public at large.

8-9. "Practice of land surveying":

- a. Means making land boundary determinations by providing or offering to provide professional services using such sciences as mathematics, geodesy, and photogrammetry and involving the making of geometric measurements and gathering related information pertaining to the physical or legal features of the earth; improvements on the earth; and improvements on the space above, on, or below the earth and providing, utilizing, or developing the same into land survey products such as graphics, data, maps, plans, reports, descriptions, or projects. As used in this subsection, professional services include acts of consultation, investigation, testimony evaluation, expert technical testimony, planning, mapping, assembling, and interpreting gathered measurements and information related to any one or more of the following:
  - (1) Determining by measurement the configuration or contour of the earth's surface or the position of fixed objects on the earth's surface;
  - (2) Determining by performing geodetic land surveys the size and shape of the earth or the position of any point on the earth;
  - (3) Locating, relocating, establishing, re-establishing, or retracing property lines or boundaries of any tract of land, road, right of way, or easement;
  - (4) Making any land survey for the division, subdivision, or consolidation of any tract of land;
  - (5) Locating or laying out alignments, positions, or elevations for the construction of fixed works;
  - (6) Determining by the use of principles of land surveying the position for any survey monument, boundary or nonboundary, or reference point

and establishing or replacing any such monument or reference point;  
and

- (7) Creating, preparing, or modifying electronic or computerized or other data for the purpose of making land boundary determinations relative to the performance of the activities in paragraphs 1 through 6.

b. Includes:

- (1) Engaging in land surveying;
- (2) By verbal claim, sign, advertisement, letterhead, card, or any other way representing to a person to be a professional land surveyor;
- (3) Through the use of some other title implying to be a professional land surveyor or that the person is licensed or authorized under this chapter; and
- (4) Holding out as able to perform or performing any land surveying service or work or any other service designated by the practitioner which is recognized as land surveying.

9-10. "Professional engineer" means 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 registered and licensed by the state board of registration for professional engineers and land surveyors.

40-11. "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.

44-12. "Responsible charge" means direct control and personal supervision of engineering or surveying work.

42-13. "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.

**SECTION 2. 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~~executive director for the board shall receive and account for all moneys derived under the provisions of this chapter and shall deposit and disburse the 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 the bond is a proper and necessary expense of the board.~~ The ~~secretary~~executive director shall receive such salary as the board shall determine. The board shall employ clerical or other assistants as are necessary for the proper performance of the board's work and shall make expenditures of this fund for any purpose the board determines is reasonably necessary for the proper

performance of the board's duties under this chapter, including the expenses of the board's delegates to meetings of and membership fees to the national council of examiners for engineering and surveying and any of 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 3. 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 the board's proceedings and of all applications for registration. 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 the applicant was rejected; whether 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. The record of the board is prima facie evidence of the proceeding of the board and a transcript of board proceedings which is certified by the ~~secretary~~executive director under seal is admissible as evidence with the same force and effect as if the original were produced.
2. Annually, in compliance with state law, submit a report of the board's transactions of the preceding year.

**SECTION 4. 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 professional engineers and land surveyors must be made available by the ~~secretary~~executive director for the board at intervals as established by board regulations. Copies of this roster must be made available to each registrant and all county auditors and city auditors and may be distributed or sold to the public.

**SECTION 5. 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~~board-approved examination of ~~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 an engineer intern with a baccalaureate degree in engineering from an institution offering accredited programs approved by the board as being of satisfactory standing, 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.

2. Is an engineer intern with a baccalaureate degree in engineering from a program that is not accredited but is approved by the board, 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.
3. Is 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 that indicates to the board that the applicant is competent to practice engineering, who has been approved for the fundamentals of engineering examination by the board before July 1, 2004, and who holds a valid engineer intern certificate as of January 1, 2006.
4. Is 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 nonteaching engineering experience that is of a character and grade that indicates to the board that the applicant is competent to practice engineering.
5. Is an engineer intern with a baccalaureate degree in an engineering-related program, who has at least twelve years of progressive experience in engineering work of a character and grade which indicates to the board that the applicant is competent to practice engineering.

**SECTION 6. 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 engineer interns.**

Except in the case of an individual who filed an application before July 1, 1967, and any subsequent reapplication by such individual, an applicant otherwise qualified must be admitted to certification as an engineer intern. An engineer intern is an individual who has:

1. A baccalaureate degree in engineering from an institution that offers accredited programs approved by the board and has passed ~~the board's written a board-approved~~ examination of ~~at least eight hours~~ in the fundamentals of engineering shall be certified or enrolled as an engineer intern.
2. A baccalaureate degree in engineering from a program that is not accredited but is approved by the board, who has a specific record of at least four years of experience in engineering work of a grade and character satisfactory to the board, and who passes ~~the board's written a board-approved~~ examination of ~~at least eight hours~~ in the fundamentals of engineering.
3. A baccalaureate degree in an engineering-related program, who has a specific record of at least six years of experience in engineering work of a grade and character satisfactory to the board, and who passes ~~the board's written a board-approved~~ examination of ~~at least eight hours~~ in the fundamentals of engineering.

**SECTION 7. 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, land surveyors, engineer interns, and land 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 fifty dollars for a one-year period or ~~two~~three 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 8. 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 professional examinations may not be taken until the applicant has completed a period of engineering or land surveying experience as provided in this chapter~~ be taken as soon as a candidate desires, without having to complete a specific amount of experience. The board shall establish the minimum passing grade on any examination. A candidate failing one examination may apply for re-examination, which may be granted upon payment of a fee established by the board. ~~Any candidate for registration having an average grade that does not meet the standards set by the board may not apply for re-examination for one year from the date of such examination.~~

**SECTION 9. 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 engineer interns or land 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~~executive director under seal of the board. The issuance of a certificate of registration by the board is prima facie evidence the 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 10. 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.**

A certificate of registration expires on December thirty-first of the year of issuance if registration is on an annual basis and of the year after issuance if issued on a biennial basis and becomes invalid after that date unless renewed. ~~The secretary~~efexecutive director for the board shall notify every registrant under this chapter of the date of the expiration of the registrant's certificate of registration and the amount of fee required for its renewal. The notice must be mailed or electronically sent, if the registrant has opted in to receive electronic renewal notices, to the registrant at the

registrant's last-known address or electronic mail 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 re-examination and penalty fees.

**SECTION 11. 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 made available to every registrant and applicant for registration under this chapter, and which must be published in the roster provided 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 notify each registrant of such revisions or amendments. The code of ethics applies to all certificate holders, individual and certificate of commercial practice, including specialists in a particular branch of the engineering or surveying profession.

**SECTION 12. 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 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 filed with the secretary of executive director for the board. All charges, unless dismissed by the board as unfounded or trivial, must be heard by the board within six months following the filing of charges unless the accused registrant waives this requirement. The board may resolve a disciplinary action at any time through informal disposition as provided in section 28-32-22. The matters considered at the hearing must include all charges made in the original filing, together with any related or additional matters or charges that arise in connection with the investigation of the original charges, and which are set forth in a specification of issues for the hearing. The time and place for 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, and a specification of the issues to be considered at the hearing must be served upon the accused registrant either personally or sent by registered mail to the last-known address of 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 fails or refuses to appear, the board may proceed to hear and determine the validity of the issues set forth in the specification of issues or enter a default order under section 28-32-30. 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 all or part of the issues set forth in the specification of issues, the board shall make findings of fact and conclusions of law and shall issue the board's order and serve the findings, conclusions, and order upon the accused. In the order the board may reprimand, suspend, refuse to renew, or revoke the accused registrant's certificate of registration. Any registrant who feels aggrieved by any action of the board in denying, suspending, refusing to renew, or revoking that registrant's

certificate of registration may appeal the board's action to the district court under the procedures provided by chapter 28-32.

**SECTION 13. 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 that practices or offers to practice engineering or land surveying in this state without being registered in accordance with the provisions of this chapter; any person using or employing the words "engineer", "engineering", "professional engineer", "surveyor", "land surveyor", "professional land surveyor", or any modification or derivative of these terms in that person's name, form of business, or activity, except as authorized in this chapter; any person presenting or attempting to use the certificate of registration or the seal of another; any person giving any false or forged evidence of any kind to the board or to any member of the board in obtaining or attempting to obtain a certificate of registration; or any person falsely impersonating any other registrant of like or different name; any person attempting to use an expired or revoked or nonexistent certificate of registration practicing or offering to practice when not qualified; any person falsely claiming that person is registered under this chapter; or any person 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 of the state, to enforce the provisions of this chapter. In addition to any criminal penalty authorized under this section, the board may assess a civil penalty not to exceed two thousand five hundred dollars for each violation of section 43-19.1-25. The civil penalty may be imposed by a court in a civil proceeding or by the board through an administrative proceeding.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 387

### HOUSE BILL NO. 1190

(Representatives Louser, Boschee, Cory, Koppelman, Mock, Steiner, VanWinkle)  
(Senators Larsen, Larson)

AN ACT to create and enact a new section to chapter 43-23 of the North Dakota Century Code, relating to real estate wholesale buyers and sellers; and to amend and reenact sections 43-23-06.1 and 43-23-07 of the North Dakota Century Code, relating to practicing as a real estate broker or salesperson.

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

<sup>215</sup> **SECTION 1. AMENDMENT.** Section 43-23-06.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-23-06.1. Definitions.**

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

1. "Appointed agent" means a licensee appointed by a designated broker of the licensee's real estate brokerage firm to act solely for a client of that brokerage firm to the exclusion of other licensees of that brokerage firm.
2. "Client" means a person that has entered a written agency agreement with a real estate brokerage firm.
3. "Commission" means the North Dakota real estate commission.
4. "Customer" means a buyer, prospective buyer, seller, lessee, or lessor that is not represented by that real estate brokerage firm in a real property transaction.
5. "Designated broker" means a licensee designated by a real estate brokerage firm to act on behalf of the brokerage firm.
6. "Dual agency" means a situation in which a real estate brokerage firm or the real estate brokerage firm's licensees owe a duty to more than one party in a real estate transaction. Dual agency is established only as follows:
  - a. When one licensee represents both the buyer and the seller in a real estate transaction; or
  - b. When two or more licensees, licensed to the same broker, each represents a party to the real estate transaction.

"Dual agency" does not exist unless both the seller and the buyer in a real estate transaction have written agency agreements with the same real estate brokerage firm. For purposes of "dual agency" a subagency arrangement is

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<sup>215</sup> Section 43-23-06.1 was also amended by section 21 of House Bill No. 1038, chapter 65.

not a written agency agreement.

7. "Licensee" means a real estate broker, an associate real estate broker, or a real estate salesperson who is associated with a real estate brokerage firm.
8. "Real estate", "real property", "realty", or words of like import, means any interest or estate in land, including leaseholds, whether such interest or estate is corporeal, incorporeal, freehold, or nonfreehold, and whether situated in this state or elsewhere; provided, however, that the meaning as used in this chapter does not include oil, gas, or mineral leases, nor does it include any other mineral leasehold, mineral estate, or mineral interest of any nature whatsoever.
9. "Real estate broker", or "broker", means any person that, for another, for a fee, commission, salary, or other consideration, or with the intention or expectation of receiving or collecting such compensation from another, engages in or offers or attempts to engage in, either directly or indirectly by a continuing course of conduct or by a single act or transaction, any of the following acts:
  - a. Lists, offers, attempts, or agrees to list real estate or any interest in that real estate, or any improvements affixed on that real estate for sale, exchange, or lease.
  - b. Sells, exchanges, purchases, or leases real estate or any interest in that real estate, or any improvements affixed on that real estate.
  - c. Offers to sell, exchange, purchase, or lease real estate or any interest in that real estate, or any improvements affixed on that real estate.
  - d. Negotiates or offers, attempts, or agrees to negotiate the sale, exchange, purchase, or leasing of real estate or any interest in that real estate, or any improvements affixed on that real estate.
  - e. Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or any interest in that real estate, or any improvements on that real estate.
  - f. Who is a licensee under this chapter and performs any of the acts set out in this subsection while acting in the licensee's own behalf.
  - g. Advertises or holds out as being engaged in the business of buying, selling, exchanging, or leasing of real estate or any interest in that real estate, or any improvements on that real estate.
  - h. Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, or leasing of real estate or any interest in that real estate, or any improvements on that real estate.
  - i. Publicly markets for sale an equitable interest in a contract for the purchase of real property between a property owner and a prospective purchaser.

10. "Real estate brokerage firm" means a person that is providing real estate brokerage services through that person's licensees and which is licensed by the commission as a real estate brokerage firm.
11. "Real estate salesperson" means any person that for a fee, compensation, salary, or other consideration, or in the expectation or upon the promise of that compensation, is employed or engaged by a licensed real estate broker to do any act or deal in any transaction as provided in subsection 69 for or on behalf of such licensed real estate broker.

**SECTION 2. AMENDMENT.** Section 43-23-07 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-07. Real estate brokers and salespersons - Exceptions.**

1. The term "real estate broker" or "real estate salesperson" does not include:
  1. a. Any person, partnership, association, corporation, or limited liability company who is a bona fide owner or lessor or who accepts or markets leasehold interests in residential or agricultural property and performs any of the aforesaid acts with reference to property owned or leased by them, nor does it apply to regular employees thereof, when the acts are performed in the regular course of or as an incident to the management of the property and the investment therein.
  2. b. An attorney at law, admitted to practice in this state, handling sales of real estate in the course of estate or guardianship administration in district court, or trust administration, bankruptcy proceedings, receiverships, or like actions subject to approval by a court of competent jurisdiction, or sales of real estate arising in the usual course of the practice of law.
  3. c. Any person selling real estate as an auctioneer, provided the sale is advertised as a bona fide public auction.
  4. d. Any bank or trust company or any of its officers or employees in the performance of their duties as an officer or employee of the bank or trust company.
  5. e. Any person holding in good faith a duly executed power of attorney from the owner, authorizing a final consummation and execution for the sale, purchase, lease, or exchange of real estate when such acts are not of a recurrent nature and done with the intention of evading this section.
  6. f. Any person while acting as a receiver, trustee, administrator, executor, guardian, or under court order, or while acting under authority of a deed, trust, or will.
  7. g. Public officers while performing their duties.
2. This section does not exempt from the definition of "real estate broker" or "real estate salesperson" for consideration publicly marketing for sale an equitable interest in a contract for the purchase of real property between a property owner and a prospective purchaser.

**SECTION 3.** A new section to chapter 43-23 of the North Dakota Century Code is created and enacted as follows:

**Wholesale buyers and sellers - Disclosure.**

1. As used in this section:
  - a. "Residential real property" means real property with fewer than five dwelling units.
  - b. "Wholesaler" means a person that enters an agreement to make income or profit from the transfer of or equitable interest in residential real property.
2. A wholesaler of residential real property shall disclose in writing to all parties to the agreement that the wholesaler holds an equitable interest in the property, may not be able to convey title to the property, and intends to make a profit or income from the transfer of the equitable interest.
3. Notwithstanding any other provision contained in a contract for sale of residential real property, if a wholesaler violates this section, the seller may cancel the contract for sale at any time before the close of escrow without penalty and may retain any earnest money paid by the wholesaler.
4. Notwithstanding any other provision contained in the contract for sale, if a wholesaler violates this section, the buyer may cancel the contract for sale at any time before the close of escrow without penalty and must be refunded all earnest money paid by the buyer.

Approved March 22, 2023

Filed March 23, 2023

## CHAPTER 388

### HOUSE BILL NO. 1107

(Industry, Business and Labor Committee)

(At the request of the North Dakota Real Estate Appraiser Qualifications and Ethics Board)

AN ACT to amend and reenact sections 43-23.3-01 and 43-23.3-02, subsection 1 of section 43-23.3-03, sections 43-23.3-04 and 43-23.3-05, subsection 1 of section 43-23.3-06, and sections 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-10, 43-23.3-11, 43-23.3-13, 43-23.3-17, 43-23.3-18, and 43-23.3-23 of the North Dakota Century Code, relating to the regulation of real estate appraisers; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 43-23.3-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-23.3-01. Definitions.**

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

1. "Analysis" means a study of real estate other than estimating value.
2. "Appraisal" means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, real estate. An appraisal may be classified by subject matter into either a valuation or an analysis.
3. "Appraisal assignment" means an engagement for which a person is employed or retained to act, or would be perceived by the public as acting, as a disinterested party in rendering an unbiased supportable appraisal.
4. "Appraisal foundation" means the appraisal foundation incorporated as an Illinois corporation on November 30, 1987.
5. "Appraisal report" means any communication of an appraisal.
6. "Appraisal subcommittee" means the appraisal subcommittee of the federal financial institutions examination council.
7. "Appraiser" means a person who engages in appraisal activity for valuable consideration.
8. "Apprentice appraiser" means a person who holds a valid permit as an apprentice appraiser.
9. "Board" means the North Dakota real estate appraiser qualifications and ethics board.

10. "Certified appraiser" means a person who holds a valid permit as a certified residential or general appraiser.
11. "Certified general appraiser" means a person who holds a valid permit as a certified general appraiser.
12. "Certified residential appraiser" means a person who holds a valid permit as a certified residential appraiser.
13. "Licensed appraiser" means a person who holds a valid permit as a licensed appraiser.
14. "Permit" means the document issued by the board, verifying that the person named on the permit has fulfilled all prerequisites to practice either as an apprentice appraiser, a licensed appraiser, or a certified appraiser.
15. "Real estate" means an identified parcel or tract of land including improvements, and interests, benefits, and rights inherent in the ownership of real estate.
16. "Uniform standards of professional appraisal practices" means standards of appraisal promulgated by the appraisal standards board of the appraisal foundation as adopted ~~and modified~~ by the board. ~~The standards adopted and modified by the board must meet the minimum standards adopted by the appraisal foundation.~~
17. "Valuation" means an estimate of the value of real estate or real property.

**SECTION 2. AMENDMENT.** Section 43-23.3-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-02. North Dakota real estate appraiser qualifications and ethics board.**

1. The governor shall appoint the board. The board must consist of five members. One member must represent the public; one member must be a representative of the financial industry; and three members must be appraisers, at least one of which is experienced in the appraisal of agricultural property.
  - a. Each appraiser member of the board must be either a licensed or certified appraiser, but at least two of the appraiser members must be certified appraisers.
  - b. The governor shall appoint the financial industry representative from a list of qualified individuals submitted by the North Dakota bankers associations, the credit union association of the Dakotas, and the North Dakota farm credit system associations. Each of these entities may submit two names of candidates to the governor. The public member of the board may not be engaged in the practice of real estate appraising.
2. The term of each member is five years. A member may not serve more than two consecutive five-year terms, after which at least two years must pass before the governor may reappoint that former member to the board. The governor shall appoint members so the terms of no more than two members expire each year. A member of the board continues to hold office until the

appointment and qualification of a successor. The governor may remove a board member for cause.

3. ~~Annually the members shall elect a chairman from among the members. At least two of the members who are appraiser members must be present in order for a quorum to exist. The members are entitled to receive compensation for each day actually engaged in the service of the board and actual and necessary traveling expenses at the rate allowed other state officials, paid from the fees collected by the board.~~
4. At least two of the members who are appraiser members must be present in order for a quorum to exist.
5. The members are entitled to receive compensation for each day actually engaged in the service of the board and actual and necessary traveling expenses at the rate allowed other state officials, paid from the fees collected by the board.

**SECTION 3. AMENDMENT.** Subsection 1 of section 43-23.3-03 of the North Dakota Century Code is amended and reenacted as follows:

1. The board, or the board's designated representative, shall:
  - a. Define apprentice appraiser, licensed appraiser, certified residential appraiser, and certified general appraiser; determine the type of educational experience, appraisal experience, and equivalent experience that meet the requirements of this chapter; establish application procedures; and establish standards for approval and disapproval of applications for permits.
  - b. ~~Establish examination specifications for each category of licensed and certified~~the apprentice and supervisory appraiser and administer examinations.
  - c. Approve or disapprove applications for permits, issue ~~pocket cards and~~ permits to practice, and maintain a registry of the names and addresses of individuals holding permits.
  - d. Discipline permittees.
  - e. Hold meetings, hearings, and examinations in places and at times as the board designates and maintain records of board activities.
  - f. Adopt rules, pursuant to chapter 28-32, necessary to implement this chapter or carry out the requirements imposed by federal law.
  - g. Adopt rules that clearly and concisely establish the standards for approval and disapproval of applications for permits. The rules must include a requirement that an application disapproval clearly specify the basis for the disapproval.
  - h. Keep permittees informed of board activities, including providing notification of board member terms and any upcoming board vacancy; internet posting of meeting notices and minutes; and internet posting of proposed and final rule changes.

**SECTION 4. AMENDMENT.** Section 43-23.3-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-04. Permit required - Exemptions.**

1. Except as provided in this section, a person may not directly or indirectly engage in, advertise, conduct the business of, or act in any capacity as an apprentice, licensed, or certified appraiser without first obtaining a permit as provided in this chapter.
2. An appraiser, apprenticed, licensed, or certified in another state may not engage in, advertise, conduct the business of, or act in any capacity as an appraiser in this state without first obtaining a temporary permit under section 43-23.3-11 or a permit under section 43-23.3-04.1.
3. This chapter does not apply to a licensed real estate broker or salesperson who, in the ordinary course of business, gives an opinion to a potential seller or third party as to the recommended listing price of real estate or an opinion to a potential purchaser or third party as to the recommended purchase price of real estate. However, the opinion as to the listing price or the purchase price may not be referred to as an appraisal.
4. This chapter does not apply to a person who, in the ordinary course of business, gives an opinion of the value of real estate to that person's employer.
5. This chapter does not apply to a person employed by the Bank of North Dakota when providing evaluations or reviews of appraisals for federally insured depository institutions under federal financial institution regulatory agency appraisal exemptions.

**SECTION 5. AMENDMENT.** Section 43-23.3-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-05. Permit process.**

An individual who desires to engage in the practice of real estate appraisal shall apply for a permit ~~on forms prescribed by~~with the board and submit the required fee.

**SECTION 6. AMENDMENT.** Subsection 1 of section 43-23.3-06 of the North Dakota Century Code is amended and reenacted as follows:

1. An apprentice appraiser must meet the minimum requirements established by the board for a permit. An apprentice appraiser may only assist ~~a licensed or a~~ certified appraiser in the performance of an appraisal assignment.

**SECTION 7. AMENDMENT.** Section 43-23.3-07 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-07. Examination requirement.**

The board shall issue a permit to practice as a licensed, certified residential, or certified general appraiser to an individual who has ~~demonstrated the following qualifications through a written examination process:~~

1. ~~Knowledge of technical terms used in or related to real estate appraising, appraisal report writing, and economic concepts relating to real estate.~~

2. ~~Understanding of the principles of land economics, appraisal processes, and of problems likely to be encountered in gathering, interpreting, and processing of data in carrying out appraisal disciplines.~~
3. ~~Understanding of the uniform standards of professional appraisal practices.~~
4. ~~Knowledge of theories of depreciation, cost estimating, methods of capitalization, the mathematics of real estate appraisal, and other principles and procedures determined by the board to be appropriate for the appreciable classification of permit.~~
5. ~~Basic understanding of real estate law.~~
6. ~~Understanding of the types of misconduct for which disciplinary proceedings may be initiated against an appraiser~~successfully completed the appropriate national examination as required by the appraisal foundation appraisal qualification board criteria.

**SECTION 8. AMENDMENT.** Section 43-23.3-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-08. ~~Application prerequisites~~Appraisal education requirements.**

An applicant for a permit as an apprentice, licensed, certified residential, or certified general appraiser ~~must~~shall successfully complete the education requirements established by the board.

**SECTION 9. AMENDMENT.** Section 43-23.3-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-09. Appraisal experience requirements.**

The board may issue a permit to practice as a licensed, certified residential, or certified general appraiser to an individual who possesses the minimum experience requirements established by the board. ~~The board shall require an applicant to furnish, under oath, a detailed listing of the appraisal reports or file memoranda for which appraisal experience is claimed by the applicant. Upon request, the applicant shall provide to the board copies of appraisal reports or other documents that the applicant has assisted in preparing.~~

**SECTION 10. AMENDMENT.** Section 43-23.3-10 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-10. Expiration of permit.**

Permits expire biennially on December thirty-first of each year. The expiration date of the permit must appear on the permit and no other notice of its expiration need be given to the permittee.

**SECTION 11. AMENDMENT.** Section 43-23.3-11 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-11. Temporary permit.**

1. The board may issue a temporary permit to an applicant who is ~~apprenticed~~, licensed, or certified in good standing by another state. The board may deny a temporary permit to an applicant whose permit, apprenticeship, license, or

certification was revoked, suspended, or otherwise subjected to discipline by any state or jurisdiction.

- ~~2. An applicant for a temporary permit shall file with the board a designation in writing which appoints the chairman of the board to act as the applicant's licensed agent upon whom all judicial and other process or legal notices directed to the applicant may be served. Copies of the appointment, certified by the chairman of the board, may be received in evidence in any proceeding and must be given the same effect as the original. In the written designation, the applicant shall agree that any lawful process against that individual which is served upon the agent is of the same legal force as if served upon the applicant, and that the authority of the agent continues in force as long as any liability of the applicant remains outstanding in this state. Upon the receipt of any process or notice, the chairman shall mail a copy of the process or notice by certified mail, return receipt requested, to the last known business address of the applicant.~~
- ~~3. The board may issue a temporary permit to an applicant if the applicant agrees in writing to abide by this chapter and to submit to the jurisdiction of the board.~~
- ~~4.3. The board shall issue a temporary permit to an applicant who has complied with this section. The board may require the applicant to pay a fee. The board shall determine the amount of the fee and the duration of the temporary permit.~~

**SECTION 12. AMENDMENT.** Section 43-23.3-13 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-13. Principal place of business.**

A permittee shall notify the board of the address of the permittee's place of business. Within twenty days of a change in the address of the place of business, the permittee shall give written notification of the change to the board and pay the change of address fee.

**SECTION 13. AMENDMENT.** Section 43-23.3-17 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-17. Retention of records.**

~~An apprentice, licensed, or certified appraiser shall retain, for at least five years, originals or copies of all written contracts engaging the permittee's services for appraisal work and all reports and supporting data assembled and formulated by the permittee in preparing the reports. The period for retention of records applies to each engagement of the services of the permittee and commences upon the date of the submission of the appraisal to the client unless, within that period, the permittee is notified that the appraisal report is involved in litigation, in which event the period for the retention of records commences on the date of the final disposition of the litigation. The permittee shall make available for inspection and copying by the board on reasonable notice all records required to be maintained comply with the recordkeeping rule as specified in the uniform standards of professional appraisal practice.~~

**SECTION 14. AMENDMENT.** Section 43-23.3-18 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-18. Standards of professional appraisal practice.**

An apprentice, licensed, or certified appraiser shall comply with the standards of professional appraisal practice and ethical rules specified by the uniform standards of professional appraisal practice and all other standards and ethical requirements adopted by the appraisal standards board of the appraisal foundation.

**SECTION 15. AMENDMENT.** Section 43-23.3-23 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-23. Penalties.**

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

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 389

### HOUSE BILL NO. 1128

(Representatives Hatlestad, Longmuir, Pyle, Richter, Rohr, Strinden)  
(Senators Bekkedahl, Kreun)

AN ACT to amend and reenact subsection 2 of section 43-25-02, subsection 1 of section 43-25-05, subsection 1 of section 43-25-07, section 43-25-09, subsection 1 of section 43-25-10, and subsection 1 of section 43-25-18, relating to the practice and licensure of massage therapy.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 43-25-02 of the North Dakota Century Code is amended and reenacted as follows:

2. a. "Massage" means the practice of massage therapy by the manual application of a system of structured touch to the soft tissues of the human body, including:
  - (1) Assessment, evaluation, or treatment;
  - (2) Pressure, friction, stroking, rocking, gliding, kneading, percussion, or vibration;
  - (3) Active or passive stretching of the body within the normal anatomical range of movement;
  - (4) Use of manual methods or mechanical or electrical devices or tools that mimic or enhance the action of human handstouch;
  - (5) Use of topical applications such as lubricants, scrubs, or herbal preparations; and
  - (6) Use of hot or cold applications.
- b. 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.

**SECTION 2. AMENDMENT.** Subsection 1 of section 43-25-05 of the North Dakota Century Code is amended and reenacted as follows:

1. The governor shall appoint a board of massage therapy, to consist of five members.
  - a. Three members of the board must be massage therapists who are licensed in this state and annually work at least five hundred hours practicing massage in this state and have done so for at least the previous

three years. These members must be appointed for terms of three years, staggered so that the term of one member expires each year.

- b. One member of the board must be a consumer member. To qualify as a consumer member an individual may not be or have been a massage therapist, may not have an immediate family member who is a massage therapist, may not be an owner of or have any affiliation with a massage school, ~~may not be a current or past member of any other health care licensing entity, may not have a fiduciary obligation to a facility rendering health care services, may not have a financial interest in the rendering of health care services,~~ and may not have a direct and substantial financial interest in massage therapy. This member must be appointed for a two-year term, staggered so that the term expires with a licensed board member but not with the instructor board member.
- c. One member of the board must be a current or former massage therapy instructor of a massage therapy program that meets the standards set by the board. This member must be appointed for a term of two years, staggered so that the term expires with a licensed board member but not with the consumer board member.
- d. Each member of the board holds office until that member's successor is appointed and qualified. Any member ~~appointed to a term beginning after June 30, 2013,~~ may only serve for a total of six consecutive years, after which that member may not be reappointed unless a period of three years has passed since that member last served on the board.

**SECTION 3. AMENDMENT.** Subsection 1 of section 43-25-07 of the North Dakota Century Code is amended and reenacted as follows:

1. Any ~~person~~individual who is eighteen years of age or more ~~and of good moral character and temperate habits~~older 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 an approved massage therapy education program that meets the standards set by the board;
  - b. Receives a passing score on an examination approved by the board; ~~and~~
  - c. Pays the required fees, which must accompany the application to the board; ~~and~~
  - d. Meets any other requirements set by the board by rule.

**SECTION 4. 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 ~~licensee shall display the licensee's original license must be conspicuously displayed or license renewal card~~ licensee shall display the licensee's original license must be conspicuously displayed or license renewal card at the licensee's place of practice.
2. Except as otherwise provided under this subsection, twenty-four hours of continuing education, or equivalent college credits, submitted every two years

is required for renewal of the license. Of the twenty-four hours, twelve hours must be classroom, hands-on hours. For the first renewal after becoming licensed in this state, a minimum of three hours of the required twenty-four hours must be ethics education. If an applicant for renewal is in good standing and has been actively practicing massage for the fifteen years immediately preceding the renewal, six hours of continuing education, or equivalent college credits, submitted every two years is required for renewal of the license. If an applicant for renewal is in good standing and has been actively practicing massage for the twenty-five years immediately preceding the renewal, three hours of continuing education, or equivalent college credits, submitted every two years is required for renewal of the license. The board may accept continuing education attained by remote means. No more than ~~ten hours~~ fifty percent 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 as defined in this chapter.

- a. Licensees with odd-numbered licenses shall report required continuing education on or before February twenty-eighth of each odd-numbered year and pay a required renewal fee of two hundred dollars or a lesser amount established by the board.
  - b. Licensees with even-numbered licenses shall report required continuing education on or before February twenty-eighth of each even-numbered year and pay a required renewal fee of two hundred dollars or a lesser amount established by the board.
  - c. Licensed individuals during their initial licensure period are not required to report hours of continuing education. Thereafter, the licensees shall report continuing education pursuant to subdivisions a and b.
  - d. The board may grant an individual waiver based on health issues or other good cause deemed sufficient by the board.
3. If the board reasonably believes a massage therapist or applicant has a physical or ~~mental~~ behavioral health condition jeopardizing the health of those who seek massage from the individual, the board may require the individual to have an appropriate examination by a qualified examiner approved by the board. Refusal to submit to an examination, if the refusal is not due to circumstances beyond the licensee's control, constitutes grounds for discipline under section 43-25-10. If the individual has had or has any communicable disease deemed 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. A holder of an expired license may within two years from the date of its expiration have the license renewed upon payment of the required renewal fee. The board may require a new certificate of physical examination and evidence of completion of any required continued educational hours.
  5. All licenseholders must be designated as licensed massage therapists and may not use any title or abbreviation without the designation "massage therapist".

6. An applicant with training and credentials outside of the United States ~~must~~shall submit at the applicant's own expense qualifications, credentials, and work experience to ~~one of the following credentialing agencies for review:~~
  - a. ~~International education research foundation;~~
  - b. ~~International consultants of Delaware, inc.;~~ or
  - e. A credentialing agency approved by the board.
7. Failure to have a review completed by a credentialing agency under subsection 6 and the massage therapy application procedures indemnified by the board may result in the board denying the application. The board may accept or refuse any recommendation made by the credentialing agency.

**SECTION 5. AMENDMENT.** Subsection 1 of section 43-25-10 of the North Dakota Century Code is amended and reenacted as follows:

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, or other legal or illegal drugs, to the extent the licensee is 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 the licensee infringes on any other licensed profession.
  - f. The licensee is guilty of gross 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 or applicant failed to submit to a physical or behavioral health examination ordered by the board under section 43-25-09.
  - h. The licensee has violated this chapter or any rule adopted by the board.

**SECTION 6. AMENDMENT.** Subsection 1 of section 43-25-18 of the North Dakota Century Code is amended and reenacted as follows:

1. Any individual who has been duly licensed in another city, county, state, territory, or jurisdiction of the United States, to practice massage, 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, if the applicant provides evidence satisfactory to the board the applicant:
  - a. ~~Is~~The applicant is licensed in good standing in any other city, county, state, territory, or jurisdiction of the United States;
  - b. ~~Actively~~The applicant actively practiced for at least two of the last three years;
  - c. ~~Graduated~~The applicant graduated from a school of massage or massage therapy program approved by the board which may be proven by presentation of a diploma or credentials;
  - d. ~~Passed~~The applicant passed an examination acceptable to the board; and
  - e. A massage license granted to the applicant in any other city, county, state, territory, or jurisdiction is not subject to suspension, revocation, or otherwise restricted in any manner for disciplinary purposes; and.

Approved April 6, 2023

Filed April 10, 2023

## CHAPTER 390

### SENATE BILL NO. 2205

(Senators K. Roers, Hogan, Lee)  
(Representatives Nelson, Schreiber-Beck, Strinden)

AN ACT to create and enact a new section to chapter 43-32 and chapter 43-32.1 of the North Dakota Century Code, relating to predoctoral internships and adoption of the psychology interjurisdictional compact.

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

**SECTION 1.** A new section to chapter 43-32 of the North Dakota Century Code is created and enacted as follows:

##### **Predoctoral supervised psychological internship.**

The board may adopt rules and standards to establish a predoctoral supervised psychological internship program.

**SECTION 2.** Chapter 43-32.1 of the North Dakota Century Code is created and enacted as follows:

##### **43-32.1-01. Psychology interjurisdictional compact.**

#### **ARTICLE I - PURPOSE**

**WHEREAS,** states license psychologists, in order to protect the public through verification of education, training and experience and ensure accountability for professional practice; and

**WHEREAS,** this compact is intended to regulate the day-to-day practice of telepsychology (i.e. the provision of psychological services using telecommunication technologies) by psychologists across state boundaries in the performance of their psychological practice as assigned by appropriate authority; and

**WHEREAS,** this compact is intended to regulate the temporary in-person, face-to-face practice of psychology by psychologists across state boundaries for thirty days within a calendar year in the performance of their psychological practice as assigned by an appropriate authority;

**WHEREAS,** this compact is intended to authorize state psychology regulatory authorities to afford legal recognition, in a manner consistent with the terms of the compact, to psychologists licensed in another state;

**WHEREAS,** this compact recognizes that states have a vested interest in protecting the public's health and safety through their licensing and regulation of psychologists and that such state regulation will best protect public health and safety;

**WHEREAS,** this compact does not apply when a psychologist is licensed in both the home and receiving states; and

WHEREAS, this compact does not apply to permanent in-person, face-to-face practice, it does allow for authorization of temporary psychological practice. Consistent with these principles, this compact is designed to achieve the following purposes and objectives:

1. Increase public access to professional psychological services by allowing for telepsychological practice across state lines as well as temporary in-person, face-to-face services into a state which the psychologist is not licensed to practice psychology;
2. Enhance the states' ability to protect the public's health and safety, especially client/patient safety;
3. Encourage the cooperation of compact states in the areas of psychology licensure and regulation;
4. Facilitate the exchange of information between compact states regarding psychologist licensure, adverse actions and disciplinary history;
5. Promote compliance with the laws governing psychological practice in each compact state; and
6. Invest all compact states with the authority to hold licensed psychologists accountable through the mutual recognition of compact state licenses.

## **ARTICLE II - DEFINITIONS**

In this compact:

1. "Adverse action" means any action taken by a state psychology regulatory authority which finds a violation of a statute or regulation that is identified by the state psychology regulatory authority as discipline and is a matter of public record.
2. "Association of state and provincial psychology boards" means the recognized membership organization composed of state psychology regulatory authorities responsible for the licensure and registration of psychologists throughout the United States and Canada.
3. "Authority to practice jurisdictional telepsychology" means a licensed psychologist's authority to practice telepsychology, within the limits authorized under this compact, in another compact state.
4. "Bylaws" means those bylaws established by the psychology interjurisdictional compact commission pursuant to article X for its governance, or for directing and controlling its actions and conduct.
5. "Client/patient" means the recipient of psychological services, whether psychological services are delivered in the context of health care, corporate, supervision, and/or consulting services.
6. "Commissioner" means the voting representative appointed by each state psychology regulatory authority pursuant to article X.
7. "Compact state" means a state, the District of Columbia, or United States territory that has enacted this compact legislation and which has not

withdrawn pursuant to article XIII, subsection 3 or been terminated pursuant to article XII, subsection 2.

8. "Confidentiality" means the principle that data or information is not made available or disclosed to unauthorized persons or processes.
9. "Coordinated licensure information system" also referred to as "coordinated database" means an integrated process for collecting, storing, and sharing information on psychologists' licensure and enforcement activities related to psychology licensure laws, which is administered by the recognized, membership organization composed of state and provincial psychology regulatory authorities.
10. "Day" means any part of a day in which psychological work is performed.
11. "Distant state" means the compact state where a psychologist is physically present (not through the use of telecommunications technologies), to provide temporary in-person, face-to-face psychological services.
12. "E.passport" means a certificate issued by the association of state and provincial psychology boards that promotes the standardization in the criteria of interjurisdictional telepsychology practice and facilitates the process for licensed psychologists to provide telepsychological services across state lines.
13. "Executive board" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.
14. "Home state" means a compact state where a psychologist is licensed to practice psychology. If the psychologist is licensed in more than one compact state and is practicing under the authorization to practice interjurisdictional telepsychology, the home state is the compact state where the psychologist is physically present when the telepsychological services are delivered. If the psychologist is licensed in more than one compact state and is practicing under the temporary authorization to practice, the home state is any compact state where the psychologist is licensed.
15. "Identity history summary" means a summary of information retained by the federal bureau of investigation, or other designee with similar authority, in connection with arrests and, in some instances, federal employment, naturalization, or military service.
16. "In-person, face-to-face" means interactions in which the psychologist and the client/patient are in the same physical space and which does not include interactions that may occur through the use of telecommunication technologies.
17. "Interjurisdictional practice certificate" means a certificate issued by the association of state and provincial psychology boards that grants temporary authority to practice based on notification to the state psychology regulatory authority of intention to practice temporarily, and verification of one's qualifications for such practice.

18. "License" means authorization by a state psychology regulatory authority to engage in the independent practice of psychology, which would be unlawful without the authorization.
19. "Noncompact state" means any state which is not at the time a compact state.
20. "Psychologist" means an individual licensed for the independent practice of psychology.
21. "Psychology interjurisdictional compact commission" also referred to as "commission" means the national administration of which all compact states are members.
22. "Receiving state" means a compact state where the client/patient is physically located when the telepsychological services are delivered.
23. "Rule" means a written statement by the psychology interjurisdictional compact commission promulgated pursuant to article XI of the compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the commission and has the force and effect of statutory law in a compact state, and includes the amendment, repeal, or suspension of an existing rule.
24. "Significant investigatory information" means:
  - a. Investigative information that a state psychology regulatory authority, after a preliminary inquiry that includes notification and an opportunity to respond if required by state law, has reason to believe, if proven true, would indicate more than a violation of state statute or ethics code that would be considered more substantial than minor infraction; or
  - b. Investigative information that indicates that the psychologist represents an immediate threat to public health and safety regardless of whether the psychologist has been notified and/or had an opportunity to respond.
25. "State" means a state, commonwealth, territory, or possession of the United States, the District of Columbia.
26. "State psychology regulatory authority" means the board, office, or other agency with the legislative mandate to license and regulate the practice of psychology.
27. "Telepsychology" means the provision of psychological services using telecommunication technologies.
28. "Temporary authorization to practice" means a licensed psychologist's authority to conduct temporary in-person, face-to-face practice, within the limits authorized under this compact, in another compact state.
29. "Temporary in-person, face-to-face practice" means where a psychologist is physically present (not through the use of telecommunications technologies), in the distant state to provide for the practice of psychology for thirty days within a calendar year and based on notification to the distant state.

### **ARTICLE III - HOME STATE LICENSURE**

1. The home state shall be a compact state where a psychologist is licensed to practice psychology.
2. A psychologist may hold one or more compact state licenses at a time. If the psychologist is licensed in more than one compact state, the home state is the compact state where the psychologist is physically present when the services are delivered as authorized by the authority to practice interjurisdictional telepsychology under the terms of this compact.
3. Any compact state may require a psychologist not previously licensed in a compact state to obtain and retain a license to be authorized to practice in the compact state under circumstances not authorized by the authority to practice interjurisdictional telepsychology under the terms of this compact.
4. Any compact may require a psychologist to obtain and retain a license to be authorized to practice in a compact state under circumstances not authorized by temporary authorization to practice under the terms of this compact.
5. A home state's license authorizes a psychologist to practice in a receiving state under the authority to practice interjurisdictional telepsychology only if the compact state:
  - a. Currently requires the psychologist to hold an active e.passport;
  - b. Has a mechanism in place for receiving and investigation complaints about licensed individuals;
  - c. Notifies to commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding a licensed individual;
  - d. Requires an identity history summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the federal bureau of investigation, or other designee with similar authority, no later than ten years after activation of the compact; and
  - e. Complies with the bylaws and rules of the commission.
6. A home state's license grants temporary authorization to practice to a psychologist in a distant state only if the compact state:
  - a. Currently requires the psychologist to hold an active interjurisdictional practice certificate;
  - b. Has a mechanism in place for receiving and investigation complaints about licensed individuals;
  - c. Notifies the commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding a licensed individual;

- d. Requires an identity history summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the federal bureau of investigation, or other designee with similar authority, no later than ten years after activation of the compact; and
- e. Complies with the bylaws and rules of the commission.

#### **ARTICLE IV - COMPACT PRIVILEGE TO PRACTICE TELEPSYCHOLOGY**

1. Compact states shall recognize the right of a psychologist, licensed in a compact state in conformance with article III, to practice telepsychology in other compact states (receiving states) in which the psychologist is not licensed, under the authority to practice interjurisdictional telepsychology as provided in the compact.
2. To exercise the authority to practice interjurisdictional telepsychology under the terms and provisions of this compact, a psychologist licensed to practice in a compact state must:
  - a. Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:
    - (1) Regionally accredited by an accrediting body recognized by the United States department of education to grant graduate degrees, or authorized by provincial statute or royal charter to grant doctoral degrees;
    - (2) A foreign college or university deemed to be equivalent to paragraph 1 by a foreign credential evaluation service that is a member of the national association of credential evaluation services or by a recognized foreign credential evaluation service;
  - b. Hold a graduate degree in psychology that meets the following criteria:
    - (1) The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogs and brochures its intent to educate and train professional psychologists;
    - (2) The psychology program must stand as a recognizable, coherent, organizational entity within the institution;
    - (3) There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;
    - (4) The program must consist of an integrated, organized sequence of study;
    - (5) There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;
    - (6) The designated director of the program must be a psychologist and a member of the core faculty;



1. Compact states shall also recognize the right of a psychologist, licensed in a compact state in conformance with article III, to practice temporarily in other compact states (distant states) in which the psychologist is not licensed, as provided in the compact.
2. To exercise the temporary authorization to practice under the terms and provisions of this compact, a psychologist licensed to practice in a compact state must:
  - a. Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:
    - (1) Regionally accredited by an accrediting body recognized by the United States department of education to grant graduate degrees, or authorized by provincial statute or royal charter to grant doctoral degrees; or
    - (2) A foreign college or university deemed to be equivalent to paragraph 1 by a foreign credential evaluation service that is a member of the national association of credential evaluation services or by a recognized foreign credential evaluation service; and
  - b. Hold a graduate degree in psychology that meets the following criteria:
    - (1) The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogs and brochures its intent to educate and train professional psychologists;
    - (2) The psychology program must stand as a recognizable, coherent, organizational entity within the institution;
    - (3) There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;
    - (4) The program must consist of an integrated, organized sequence of study;
    - (5) There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;
    - (6) The designated director of the program must be a psychologist and a member of the core faculty;
    - (7) The program must have an identifiable body of students who are matriculated in that program for a degree;
    - (8) The program must include supervised practicum, internship, or field training appropriate to the practice of psychology;
    - (9) The curriculum shall encompass a minimum of three academic years of full-time graduate study for doctoral degrees and a minimum of one academic year of full-time graduate study for master's degree;

- (10) The program includes an acceptable residency as defined by the rules of the commission.
- c. Possess a current, full and unrestricted license to practice psychology in a home state which is a compact state;
  - d. No history of adverse action that violate the rules of the commission;
  - e. No criminal record history that violates the rules of the commission;
  - f. Possess a current, active interjurisdictional practice certificate;
  - g. Provide attestations in regard to areas of intended practice and work experience and provide a release of information to allow for primary source verification in a manner specified by the commission; and
  - h. Meet other criteria as defined by the rules of the commission.
3. A psychologist practicing into a distant state under the temporary authorization to practice shall practice within the scope of practice authorized by the distant state.
4. A psychologist practicing into a distant state under the temporary authorization to practice will be subject to the distant state's authority and law. A distant state may, in accordance with that state's due process law, limit or revoke a psychologist's temporary authorization to practice in the distant state and may take any other necessary actions under the distant state's applicable law to protect the health and safety of the distant state's citizens. If a distant state takes action, the state promptly shall notify the home state and the commission.
5. If a psychologist's license in any home state, another compact state, or any temporary authorization to practice in any distant state, is restricted, suspended, or otherwise limited, the interjurisdictional practice certificate shall be revoked and therefore the psychologist shall not be eligible to practice in a compact state under the temporary authorization to practice.

## **ARTICLE VI - CONDITIONS OF TELEPSYCHOLOGY PRACTICE IN A RECEIVING STATE**

A psychologist may practice in a receiving state under the authority to practice interjurisdictional telepsychology only in the performance of the scope of practice for psychology as assigned by an appropriate state psychology regulatory authority, as defined in the rules of the commission, and under the following circumstances:

1. The psychologist initiates a client/patient contact in a home state via telecommunications technologies with a client/patient in a receiving state;
2. Other conditions regarding telepsychology as determined by rules promulgated by the commission.

## **ARTICLE VII - ADVERSE ACTIONS**

1. A home state shall have the power to impose adverse action against a psychologist's license issued by the home state. A distant state shall have the

- power to take adverse action on a psychologist's temporary authorization to practice within that distant state.
2. A receiving state may take adverse action on a psychologist's authority to practice interjurisdictional telepsychology within that receiving state. A home state may take adverse action against a psychologist based on an adverse action taken by a distant state regarding temporary in-person, face-to-face practice.
  3. If a home state takes adverse action against a psychologist's license, that psychologist's authority to practice interjurisdictional telepsychology is terminated and the e.passport is revoked. Furthermore, that psychologist's temporary authorization to practice is terminated and the interjurisdictional practice certificate is revoked.
    - a. All home state disciplinary orders which impose adverse action shall be reported to the commission in accordance with the rules promulgated by the commission. A compact state shall report adverse actions in accordance with the rules of the commission.
    - b. In the event discipline is reported on a psychologist, the psychologist will not be eligible for telepsychology or temporary in-person, face-to-face practice in accordance with the rules of the commission.
    - c. Other actions may be imposed as determined by the rules promulgated by the commission.
  4. A home state's psychology regulatory authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a licensee which occurred in a receiving state as it would if such conduct had occurred by a licensee within the home state. In such cases, the home state's law shall control in determining any adverse action against a psychologist's license.
  5. A distant state's psychology regulatory authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a psychologist practicing under temporary authorization practice which occurred in that distant state as it would if such conduct had occurred by a licensee within the home state. In such cases, the distant state's law shall control in determining any adverse action against a psychologist's temporary authorization to practice.
  6. Nothing in this compact shall override a compact state's decision that a psychologist's participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the compact state's law. Compact states must require psychologists who enter any alternative programs to not provide telepsychology services under the authority to practice interjurisdictional telepsychology or provide temporary psychological services under the temporary authorization to practice in any other compact state during the term of the alternative program.
  7. No other judicial or administrative remedies shall be available to a psychologist in the event a compact state imposes an adverse action pursuant to this subsection.

## **ARTICLE VIII - ADDITIONAL AUTHORITIES INVESTED IN**

### **A COMPACT STATE'S PSYCHOLOGY REGULATORY AUTHORITY**

In addition to any other powers granted under state law, a compact state's psychology regulatory authority shall have the authority under this compact to:

1. Issue subpoenas, for both hearings and investigations, which require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a compact state's psychology regulatory authority for the attendance and testimony of witnesses, and/or the production of evidence from another compact state shall be enforced in the latter state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing state psychology regulatory authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state where the witnesses and/or evidence are located; and
2. Issue cease and desist and/or injunctive relief orders to revoke a psychologist's authority to practice interjurisdictional telepsychology and/or temporary authorization to practice.
3. During the course of any investigation, a psychologist may not change the psychologist's home state licensure. A home state psychology regulatory authority is authorized to complete any pending investigations of a psychologist and to take any actions appropriate under its law. The home state psychology regulatory authority shall promptly report the conclusions of such investigations to the commission. Once an investigation has been completed, and pending the outcome of said investigation, the psychologist may change his/her home state licensure. The commission promptly shall notify the new home state of any such decisions as provided in the rules of the commission. All information provided to the commission or distributed by compact states pursuant to the psychologist shall be confidential, filed under seal and used for investigatory or disciplinary matters. The commission may create additional rules for mandated or discretionary sharing of information by compact states.

## **ARTICLE IX - COORDINATED LICENSURE INFORMATION SYSTEM**

1. The commission shall provide for the development and maintenance of a coordinated licensure information system (coordinated database) and reporting system containing licensure and disciplinary action information on all psychologists individuals to whom this compact is applicable in all compact states as defined by the rules of the commission.
2. Notwithstanding any other provision of state law to the contrary, a compact state shall submit a uniform data set to the coordinated database on all licensees as required by the rules of the commission, including:
  - a. Identifying information;
  - b. Licensure data;
  - c. Significant investigatory information;
  - d. Adverse actions against a psychologist's license;

- e. An indicator that a psychologist's authority to practice interjurisdictional telepsychology and/or temporary authorization to practice is revoked;
  - f. Nonconfidential information related to alternative program participation information;
  - g. Any denial of application for licensure, and the reasons for such denial; and
  - h. Other information which may facilitate the administration of this compact, as determined by the rules of the commission.
3. The coordinated database administrator promptly shall notify all compact states of any adverse action taken against, or significant investigative information on, any licensee in a compact state.
  4. Compact states reporting information to the coordinated database may designate information that may not be shared with the public without the express permission of the compact state reporting the information.
  5. Any information submitted to the coordinated database that is subsequently required to be expunged by the law of the compact state reporting the information shall be removed from the coordinated database.

## **ARTICLE X - ESTABLISHMENT OF THE PSYCHOLOGY**

### **INTERJURISDICTIONAL COMPACT COMMISSION**

1. The compact states hereby create and establish a joint public agency known as the psychology interjurisdictional compact commission.
  - a. The commission is a body politic and an instrumentality of the compact states.
  - b. Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.
  - c. Nothing in this compact shall be construed to be a waiver of sovereign immunity.
2. Membership, voting, and meetings.
  - a. The commission shall consist of one voting representative appointed by each compact state who shall serve as that state's commissioner. The state psychology regulatory authority shall appoint its delegate. This delegate shall be empowered to act on behalf of the compact state. This delegate shall be limited to:
    - (1) Executive director, executive secretary, or similar executive;
    - (2) Current member of the state psychology regulatory authority of a compact state; or

- (3) Designee empowered with the appropriate delegate authority to act on behalf of the compact state.
- b. Any commissioner may be removed or suspended from office as provided by the law of the state from which the commissioner is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compact state in which the vacancy exists.
- c. Each commissioner shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. A commissioner shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for commissioners' participation in meetings by telephone or other means of communication.
- d. The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.
- e. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in article XI.
- f. The commission may convene in a closed, nonpublic meeting if the commission must discuss:
- (1) Noncompliance of a compact state with its obligations under the compact;
  - (2) The employment, compensation, discipline, or other personnel matters, practices or procedures related to specific employees or other matters related to the commission's internal personnel practices, and procedures;
  - (3) Current, threatened, or reasonably anticipated litigation against the commission;
  - (4) Negotiation of contracts for the purchase or sale of goods, services, or real estate;
  - (5) Accusation against any person of a crime or formally censuring any person;
  - (6) Disclosure of trade secrets or commercial or financial information which is privileged or confidential;
  - (7) Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
  - (8) Disclosure of investigatory records compiled for law enforcement purposes;
  - (9) Disclosure of information related to any investigatory reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility for investigation or determination of compliance issues pursuant to the compact; or

- (10) Matters specifically exempted from disclosure by federal and state statute.
- g. If a meeting, or portion of a meeting, is closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The commission shall keep minutes which fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, of any person participating in the meeting, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release only by a majority vote of the commission or order of a court of competent jurisdiction.
3. The commission shall, by a majority vote of the commissioners, prescribe bylaws and/or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the compact, including but not limited to:
- a. Establishing the fiscal year of the commission;
- b. Providing reasonable standards and procedures:
- (1) For the establishment and meetings of other committees; and
- (2) Governing any general or specific delegation of any authority or function of the commission;
- c. Providing reasonable procedures for calling and conducting meetings of the commission, ensuring reasonable advance notice of all meetings and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals of such proceedings, and proprietary information, including trade secrets. The commission may meet in closed session only after a majority of the commissioners vote to close a meeting to the public in whole or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each commissioner with no proxy votes allowed;
- d. Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the commission;
- e. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar law of any compact state, the bylaws shall exclusively govern the personnel policies and programs of the commission;
- f. Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees;
- g. Providing a mechanism for concluding the operations of the commission and the equitable disposition of any surplus funds that may exist after the

- termination of the compact after the payment and/or reserving of all of its debts and obligations;
- h. The commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the compact states;
  - i. The commission shall maintain its financial records in accordance with the bylaws; and
  - j. The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.
4. The commission shall have the following powers:
- a. The authority to promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rule shall have the force and effect of law and shall be binding in all compact states;
  - b. To bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state psychology regulatory authority or other regulatory body responsible for psychology licensure to sue or be sued under applicable law shall not be affected;
  - c. To purchase and maintain insurance and bonds;
  - d. To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a compact state;
  - e. To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the compact, and to establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;
  - f. To accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the commission shall strive to avoid any appearance of impropriety and/or conflict of interest;
  - g. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the commission shall strive to avoid any appearance of impropriety;
  - h. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal or mixed;
  - i. To establish a budget and make expenditures;
  - j. To borrow money;
  - k. To appoint committees, including advisory committees comprised of members, state regulators, state legislators or their representatives, and

- consumer representatives, and such other interested persons as may be designated in this compact and the bylaws:
- l. To provide and receive information from, and to cooperate with, law enforcement agencies;
  - m. To adopt and use an official seal; and
  - n. To perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of psychology licensure, temporary in-person, face-to-face practice, and telepsychology practice.
5. The executive board. The elected officers shall serve as the executive board, which shall have the power to act on behalf of the commission according to the terms of this compact.
- a. The executive board shall be comprised of six members:
    - (1) Five voting members who are elected from the current membership of the commission by the commission; and
    - (2) One ex officio, nonvoting member from the recognized membership organization composed of state and provincial psychology regulatory authorities.
  - b. The ex officio member must have served as staff or member on a state psychology regulatory authority and will be selected by its respective organization.
  - c. The commission may remove any member of the executive board as provided in bylaws.
  - d. The executive board shall meet at least annually.
  - e. The executive board shall have the following duties and responsibilities:
    - (1) Recommend to the entire commission changes to the rules or bylaws, changes to this compact legislation, fees paid by compact states such as annual dues, and any other applicable fees;
    - (2) Ensure compact administration services are appropriately provided, contractual or otherwise;
    - (3) Prepare and recommend the budget;
    - (4) Maintain financial records on behalf of the commission;
    - (5) Monitor compact compliance of member states and provide compliance reports to the commission;
    - (6) Establish additional committees as necessary; and
    - (7) Other duties as provided in rules or bylaws.
6. Financing of the commission.

- a. The commission shall pay, or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.
  - b. The commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.
  - c. The commission may levy on and collect an annual assessment from each compact state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the commission which shall promulgate a rule binding upon all compact states.
  - d. The commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the commission pledge the credit of any of the compact states, except by and with the authority of the compact state.
  - e. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.
7. Qualified immunity, defense, and indemnification.
- a. The members, officers, executive director, employees, and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities; provided that nothing in this subdivision shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful or wanton misconduct of that person.
  - b. The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

- c. The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

### **ARTICLE XI - RULEMAKING**

1. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.
2. If a majority of the legislatures of the compact states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compact state.
3. Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.
4. Prior to promulgation and adoption of a final rule or rules by the commission, and at least sixty days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:
  - a. On the website of the commission; and
  - b. On the website of each compact states' psychology regulatory authority or the publication in which each state would otherwise publish proposed rules.
5. The notice of proposed rulemaking shall include:
  - a. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;
  - b. The text of the proposed rule or amendment and the reason for the proposed rule;
  - c. A request for comments on the proposed rule from any interested person; and
  - d. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.
6. Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

7. The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:
  - a. At least twenty-five persons who submit comments independently of each other;
  - b. A governmental subdivision or agency; or
  - c. A duly appointed person in an association that has having at least twenty-five members.
8. If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing.
  - a. All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.
  - b. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.
  - c. No transcript of the hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall bear the cost of producing the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the commission from making a transcript or recording of the hearing if it so chooses.
  - d. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.
9. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.
10. By majority vote of all members, the commission shall take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.
11. If no written notice of intent to attend the public hearing by interested parties is received, the commission may proceed with promulgation of the proposed rule without a public hearing.
12. Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:
  - a. Meet an imminent threat to public health, safety, or welfare;

- b. Prevent a loss of commission or compact state funds;
  - c. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or
  - d. Protect public health and safety.
13. The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the chair of the commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

## **ARTICLE XII - OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT**

### 1. Oversight.

- a. The executive, legislative, and judicial branches of state government in each compact state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.
- b. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a compact state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the commission.
- c. The commission shall be entitled to receive service of process in any such proceeding, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission shall render a judgment or order void as to the commission, this compact or promulgated rules.

### 2. Default, technical assistance, and termination.

- a. If the commission determines that a compact state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:
  - (1) Provide written notice to the defaulting state and other compact states of the nature of the default, the proposed means of remedying the default, and/or any other action to be taken by the commission; and
  - (2) Provide remedial training and specific technical assistance regarding the default.
- b. If a state in default fails to remedy the default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the

- compact states, and all rights, privileges and benefits conferred by this compact shall be terminated on the effective date of termination. A remedy of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.
- c. Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be submitted by the commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the compact states.
  - d. A compact state which has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations which extend beyond the effective date of termination.
  - e. The commission shall not bear any costs incurred by the state which is found to be in default or which has been terminated from the compact, unless agreed upon in writing between the commission and the defaulting state.
  - f. The defaulting state may appeal the action of the commission by petitioning the United States district court for the state of Georgia or the federal district where the compact has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.
3. Dispute resolution.
- a. Upon request by a compact state, the commission shall attempt to resolve disputes related to the compact which arise among compact states and between compact and noncompact states.
  - b. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes that arise before the commission.
4. Enforcement.
- a. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.
  - b. By majority vote, the commission may initiate legal action in the United States district court for the state of Georgia or the federal district where the compact has its principal offices against a compact state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.
  - c. The remedies herein shall not be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

**ARTICLE XIII - DATE OF IMPLEMENTATION OF THE PSYCHOLOGY  
INTERJURISDICTIONAL COMPACT COMMISSION AND ASSOCIATED RULES,  
WITHDRAWAL, AND AMENDMENTS**

1. The compact shall come into effect on the date on which the compact is enacted into law in the seventh compact state. The provisions which become effective at that time shall be limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the compact.
2. Any state which joins the compact subsequent to the commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule which has been previously adopted by the commission shall have the full force and effect of law on the day the compact becomes law in that state.
3. Any compact state may withdraw from this compact by enacting a statute repealing the same.
  - a. A compact state's withdrawal shall not take effect until six months after enactment of the repealing statute.
  - b. Withdrawal shall not affect the continuing requirement of the withdrawing state's psychology regulatory authority to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.
4. Nothing contained in this compact shall be construed to invalidate or prevent any psychology licensure agreement or other cooperative arrangement between a compact state and a noncompact state which does not conflict with the provisions of this compact.
5. This compact may be amended by the compact states. No amendment to this compact shall become effective and binding upon any compact state until it is enacted into the law of all compact states.

**ARTICLE XIV - CONSTRUCTION AND SEVERABILITY**

This compact shall be liberally construed so as to effectuate the purposes thereof. If this compact shall be held contrary to the constitution of any state member thereto, the compact shall remain in full force and effect as to the remaining compact states.

Approved April 13, 2023

Filed April 14, 2023

## CHAPTER 391

### SENATE BILL NO. 2187

(Senators Cleary, Hogan, K. Roers)  
(Representatives Porter, D. Ruby, Weisz)

AN ACT to create and enact chapter 43-47.1 of the North Dakota Century Code, relating to adoption of the counseling compact; and to amend and reenact subsection 2 of section 43-47-06 of the North Dakota Century Code, relating to licensure of counselors.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 43-47-06 of the North Dakota Century Code is amended and reenacted as follows:

2. The board shall issue a license as a licensed professional counselor to each applicant who files an application upon a form and in a manner the board prescribes, accompanied by the required fee, and who furnishes evidence to the board that the applicant:
  - a. Has a master's degree from an accredited school or college in counseling or other program that meets the academic and training standards adopted by the board;
  - b. Provided personal and professional recommendations that meet the requirements adopted by the board and satisfied the board that the applicant will adhere to the highest standards of the profession of counseling;
  - c. Has two years of supervised experience, at least fifty percent of which must have been under a licensed professional counselor or licensed psychologist, or its equivalent as determined by the board, and the additional supervised experience may have been with other qualified professionals designated by the board which are competent in the area of practice being supervised, if barriers due to geographical location, disability, or other factors determined by the board to create a hardship exist for the applicant. The qualified professional must be registered or otherwise qualified as a clinical supervisor by the board that licenses the other professional;
  - d. Provided a statement of professional intent to practice in this state describing the applicant's proposed use of the license, the intended client population, and the counseling procedures, as defined by the board, the applicant intends to use in serving the client population; and
  - e. Has demonstrated knowledge in the field of counseling by successful completion of an examination prescribed by the board.

**SECTION 2.** Chapter 43-47.1 of the North Dakota Century Code is created and enacted as follows:

**43-47.1-01. Counseling compact.****ARTICLE I - PURPOSE**

1. The purpose of this compact is to facilitate interstate practice of licensed professional counselors with the goal of improving public access to professional counseling services.
2. The practice of professional counseling occurs in the state where the client is located at the time of the counseling services. The compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.
3. This compact is designed to:
  - a. Increase public access to professional counseling services by providing for the mutual recognition of other member state licenses;
  - b. Enhance the states' ability to protect the public's health and safety;
  - c. Encourage the cooperation of member states in regulating multistate practice for licensed professional counselors;
  - d. Support spouses of relocating active duty military personnel;
  - e. Enhance the exchange of licensure, investigative, and disciplinary information among member states;
  - f. Allow for the use of telehealth technology to facilitate increased access to professional counseling services;
  - g. Support the uniformity of professional counseling licensure requirements throughout the states to promote public safety and public health benefits;
  - h. Invest all member states with the authority to hold a licensed professional counselor accountable for meeting all state practice laws in the state in which the client is located at the time care is rendered through the mutual recognition of member state licenses;
  - i. Eliminate the necessity for licenses in multiple states; and
  - j. Provide opportunities for interstate practice by licensed professional counselors who meet uniform licensure requirements.

**ARTICLE II - DEFINITIONS**

As used in this chapter, and except as otherwise provided, the following definitions apply:

1. "Active duty military" means full-time duty status in the active uniformed service of the United States of America, including members of the national guard and reserve on active duty orders pursuant to 10 U.S.C. chapters 1209 and 1211.
2. "Adverse action" means any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other

- authority against a licensed professional counselor, including actions against an individual's license or privilege to practice, such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting a licensed professional counselor's authorization to practice, including issuance of a cease and desist action.
3. "Alternative program" means a nondisciplinary monitoring or practice remediation process approved by a professional counseling licensing board to address impaired practitioners.
  4. "Continuing competence and education" means a requirement, as a condition of license renewal, to provide evidence of participation in, and completion of, educational and professional activities relevant to practice or area of work.
  5. "Counseling compact commission" or "commission" means the national administrative body which membership consists of all states that have enacted the compact.
  6. "Current significant investigative information" means:
    - a. Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the licensed professional counselor to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or
    - b. Investigative information that indicates the licensed professional counselor represents an immediate threat to public health and safety regardless of whether the licensed professional counselor has been notified and had an opportunity to respond.
  7. "Data system" means a repository of information about licensees, including continuing education, examination, licensure, investigative, privilege to practice, and adverse action information.
  8. "Encumbered license" means a license in which an adverse action restricts the practice of licensed professional counseling by the licensee and the adverse action has been reported to the national practitioner data bank.
  9. "Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of licensed professional counseling by a licensing board.
  10. "Executive committee" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.
  11. "Home state" means the member state that is the licensee's primary state of residence.
  12. "Impaired practitioner" means an individual who has a condition that may impair the individual's ability to practice as a licensed professional counselor without some type of intervention and may include alcohol and drug dependence, mental health impairment, and neurological or physical impairments.

13. "Investigative information" means information, records, and documents received or generated by a professional counseling licensing board pursuant to an investigation.
14. "Jurisprudence requirement", if required by a member state, means the assessment of an individual's knowledge of the laws and rules governing the practice of professional counseling in a state.
15. "Licensed professional counselor" means a counselor licensed by a member state, regardless of the title used by that state, to independently assess, diagnose, and treat behavioral health conditions.
16. "Licensee" means an individual who currently holds an authorization from the state to practice as a licensed professional counselor.
17. "Licensing board" means the agency of a state, or equivalent, responsible for the licensing and regulation of licensed professional counselors.
18. "Member state" means a state that has enacted the compact.
19. "Privilege to practice" means a legal authorization, which is equivalent to a license, permitting the practice of professional counseling in a remote state.
20. "Professional counseling" means the assessment, diagnosis, and treatment of behavioral health conditions by a licensed professional counselor.
21. "Remote state" means a member state other than the home state, where a licensee is exercising or seeking to exercise the privilege to practice.
22. "Rule" means a regulation promulgated by the commission which has the force of law.
23. "Single state license" means a licensed professional counselor license issued by a member state which authorizes practice only within the issuing state and does not include a privilege to practice in any other member state.
24. "State" means any state, commonwealth, district, or territory of the United States of America which regulates the practice of professional counseling.
25. "Telehealth" means the application of telecommunication technology to deliver professional counseling services remotely to assess, diagnose, and treat behavioral health conditions.
26. "Unencumbered license" means a license that authorizes a licensed professional counselor to engage in the full and unrestricted practice of professional counseling.

### **ARTICLE III - STATE PARTICIPATION IN THE COMPACT**

1. To participate in the compact, a state currently:

  - a. Shall license and regulate licensed professional counselors;
  - b. Shall require licensees to pass a nationally recognized exam approved by the commission;

- c. Shall require licensees to have a sixty semester-hour, or ninety quarter-hour, master's degree in counseling or sixty semester-hours, or ninety quarter-hours, of graduate course work, including the following topic areas:
    - (1) Professional counseling orientation and ethical practice;
    - (2) Social and cultural diversity;
    - (3) Human growth and development;
    - (4) Career development;
    - (5) Counseling and helping relationships;
    - (6) Group counseling and group work;
    - (7) Diagnosis and treatment; assessment and testing;
    - (8) Research and program evaluation; and
    - (9) Other areas as determined by the commission;
  - d. Shall require licensees to complete a supervised postgraduate professional experience as defined by the commission; and
  - e. Must have a mechanism in place for receiving and investigating complaints about licensees.
2. A member state shall:
- a. Participate fully in the commission's data system, including using the commission's unique identifier as defined in rules;
  - b. Notify the commission, in compliance with the terms of the compact and rules, of any adverse action or the availability of investigative information regarding a licensee;
  - c. Implement or use procedures for considering the criminal history records of applicants for an initial privilege to practice. These procedures must include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the federal bureau of investigation and the agency responsible for retaining that state's criminal records;
    - (1) A member state shall implement fully a criminal background check requirement, within a time frame established by rule, by receiving the results of the federal bureau of investigation record search and shall use the results in making licensure decisions.
    - (2) Communication between a member state, the commission, and among member states regarding the verification of eligibility for licensure through the compact may not include any information received from the federal bureau of investigation relating to a federal criminal records check performed by a member state under Public Law No. 92-544.
  - d. Comply with the rules of the commission;

- e. Require an applicant to obtain or retain a license in the home state and meet the home state's qualifications for licensure or renewal of licensure, as well as all other applicable state laws;
  - f. Grant the privilege to practice to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the compact and rules; and
  - g. Provide for the attendance of the state's commissioner at the counseling compact commission meetings.
- 3. Member states may charge a fee for granting the privilege to practice.
  - 4. Individuals not residing in a member state shall continue to be able to apply for a member state's single state license as provided under the laws of each member state; however, the single state license granted to these individuals may not be recognized as granting a privilege to practice professional counseling in any other member state.
  - 5. This compact does not affect the requirements established by a member state for the issuance of a single state license.
  - 6. A license issued to a licensed professional counselor by a home state to a resident in that state must be recognized by each member state as authorizing a licensed professional counselor to practice professional counseling, under a privilege to practice, in each member state.

#### **ARTICLE IV - PRIVILEGE TO PRACTICE**

- 1. To exercise the privilege to practice under the terms and provisions of the compact, the licensee:
  - a. Shall hold a license in the home state;
  - b. Must have a valid United States social security number or national practitioner identifier;
  - c. Must be eligible for a privilege to practice in any member state in accordance with subsections 4, 7, and 8;
  - d. May not have not had any encumbrance or restriction against any license or privilege to practice within the previous two years;
  - e. Shall notify the commission that the licensee is seeking the privilege to practice within a remote state;
  - f. Shall pay any applicable fees, including any state fee, for the privilege to practice;
  - g. Shall meet any continuing competence and education requirements established by the home state;
  - h. Shall meet any jurisprudence requirements established by the remote state in which the licensee is seeking a privilege to practice; and

- i. Shall report to the commission any adverse action, encumbrance, or restriction on license taken by any nonmember state within thirty days from the date the action is taken.
2. The privilege to practice is valid until the expiration date of the home state license. The licensee shall comply with the requirements of subsection 1 to maintain the privilege to practice in the remote state.
3. A licensee providing professional counseling in a remote state under the privilege to practice shall adhere to the laws and regulations of the remote state.
4. A licensee providing professional counseling services in a remote state is subject to that state's regulatory authority. In accordance with due process and that state's laws, a remote state may remove a licensee's privilege to practice in the remote state for a specific period of time, impose fines, and take any other necessary actions to protect the health and safety of its citizens. The licensee may be ineligible for a privilege to practice in any member state until the specific time for removal has passed and all fines are paid.
5. If a home state license is encumbered, the licensee shall lose the privilege to practice in any remote state until the following occur:
  - a. The home state license is no longer encumbered; and
  - b. The licensee has not had any encumbrance or restriction against any license or privilege to practice within the previous two years.
6. Once an encumbered license in the home state is restored to good standing, the licensee shall meet the requirements of subsection 1 to obtain a privilege to practice in any remote state.
7. If a licensee's privilege to practice in any remote state is removed, the individual may lose the privilege to practice in all other remote states until the following occur:
  - a. The specific period of time for which the privilege to practice was removed has ended;
  - b. All fines have been paid; and
  - c. The licensee has not had any encumbrance or restriction against any license or privilege to practice within the previous two years.
8. Once the requirements of subsection 7 have been met, the licensee shall meet the requirements in subsection 1 to obtain a privilege to practice in a remote state.

#### **ARTICLE V - OBTAINING A NEW HOME STATE LICENSE BASED ON A PRIVILEGE TO PRACTICE**

1. A licensed professional counselor may hold a home state license, which allows for a privilege to practice in other member states, in only one member state at a time.

2. If a licensed professional counselor changes primary state of residence by moving between two member states:
  - a. The licensed professional counselor shall file an application for obtaining a new home state license based on a privilege to practice, pay all applicable fees, and notify the current and new home state in accordance with applicable rules adopted by the commission.
  - b. Upon receipt of an application for obtaining a new home state license by virtue of a privilege to practice, the new home state shall verify that the licensed professional counselor meets the pertinent criteria outlined in article IV via the data system, without need for primary source verification except for:
    - (1) A federal bureau of investigation fingerprint-based criminal background check if not previously performed or updated pursuant to applicable rules adopted by the commission in accordance with Public Law No. 92-544;
    - (2) A criminal background check as required by the new home state; and
    - (3) Completion of any requisite jurisprudence requirements of the new home state.
  - c. The former home state shall convert the former home state license into a privilege to practice once the new home state has activated the new home state license in accordance with applicable rules adopted by the commission.
  - d. Notwithstanding any other provision of this compact, if the licensed professional counselor cannot meet the criteria in article IV, the new home state may apply its requirements for issuing a new single state license.
  - e. The licensed professional counselor shall pay all applicable fees to the new home state to be issued a new home state license.
3. If a licensed professional counselor changes primary state of residence by moving from a member state to a nonmember state, or from a nonmember state to a member state, the state criteria must apply for issuance of a single state license in the new state.
4. This compact may not interfere with a licensee's ability to hold a single state license in multiple states; however, for the purposes of this compact, a licensee must have only one home state license.
5. This compact may not affect the requirements established by a member state for the issuance of a single state license.

## **ARTICLE VI - ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES**

Active duty military personnel, or their spouse, shall designate a home state where the individual has a current license in good standing. The individual may retain the home state designation during the period the service member is on active duty. Subsequent to designating a home state, the individual shall change only the

individual's home state through application for licensure in the new state, or through the process outlined in article V.

### **ARTICLE VII - COMPACT PRIVILEGE TO PRACTICE TELEHEALTH**

1. Member states shall recognize the right of a licensed professional counselor, licensed by a home state in accordance with article III and under rules promulgated by the commission, to practice professional counseling in any member state via telehealth under a privilege to practice as provided in the compact and rules promulgated by the commission.
2. A licensee providing professional counseling services in a remote state under the privilege to practice shall adhere to the laws and regulations of the remote state.

### **ARTICLE VIII - ADVERSE ACTIONS**

1. In addition to the other powers conferred by state law, a remote state must have the authority, in accordance with existing state due process law, to:
  - a. Take adverse action against a licensed professional counselor's privilege to practice within that member state; and
  - b. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board in a member state for the attendance and testimony of witnesses or the production of evidence from another member state must be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before the court. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which the witnesses or evidence are located.
2. Only the home state has the power to take adverse action against a licensed professional counselor's license issued by the home state.
3. For purposes of taking adverse action, the home state shall give the same priority and effect to reported conduct received from a member state as the home state would if the conduct had occurred within the home state. In so doing, the home state shall apply its state laws to determine appropriate action.
4. The home state shall complete any pending investigations of a licensed professional counselor who changes primary state of residence during the course of the investigations. The home state also has the authority to take appropriate action and promptly shall report the conclusions of the investigations to the administrator of the data system. The administrator of the coordinated licensure information system promptly shall notify the new home state of any adverse actions.
5. A member state, if otherwise permitted by state law, may recover from the affected licensed professional counselor the costs of investigations and dispositions of cases resulting from any adverse action taken against that licensed professional counselor.

6. A member state may take adverse action based on the factual findings of the remote state, provided that the member state follows its procedures for taking the adverse action.
7. Joint investigations:
  - a. In addition to the authority granted to a member state by its respective professional counseling practice act or other applicable state law, any member state may participate with other member states in joint investigations of licensees.
  - b. Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact.
8. If adverse action is taken by the home state against the license of a licensed professional counselor, the licensed professional counselor's privilege to practice in all other member states must be deactivated until all encumbrances have been removed from the state license. All home state disciplinary orders that impose adverse action against the license of a licensed professional counselor must include a statement that the licensed professional counselor's privilege to practice is deactivated in all member states during the pendency of the order.
9. If a member state takes adverse action, the member state promptly shall notify the administrator of the data system. The administrator of the data system promptly shall notify the home state of any adverse actions by remote states.
10. This compact does not override a member state's decision that participation in an alternative program may be used in lieu of adverse action.

#### **ARTICLE IX - ESTABLISHMENT OF COUNSELING COMPACT COMMISSION**

1. The compact member states hereby create and establish a joint public agency known as the counseling compact commission.
  - a. The commission is an instrumentality of the compact states.
  - b. Venue is proper and judicial proceedings by or against the commission must be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent the commission adopts or consents to participate in alternative dispute resolution proceedings.
  - c. This compact may not be construed to be a waiver of sovereign immunity.
2. Membership, voting, and meetings.
  - a. Each member state must have and be limited to one delegate selected by that member state's licensing board.
  - b. The delegate must be either:



- the same; provided that at all times the commission shall avoid any appearance of impropriety or conflict of interest, or both;
- k. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed; provided that at all times the commission shall avoid any appearance of impropriety;
  - l. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
  - m. Establish a budget and make expenditures;
  - n. Borrow money;
  - o. Appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;
  - p. Provide and receive information from, and cooperate with, law enforcement agencies;
  - q. Establish and elect an executive committee; and
  - r. Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of professional counseling licensure and practice.
4. The executive committee.
- a. The executive committee has the power to act on behalf of the commission according to the terms of this compact.
  - b. The executive committee is composed of up to eleven members, including:
    - (1) Seven voting members who are elected by the commission from the current membership of the commission; and
    - (2) Up to four ex-officio, nonvoting members from four recognized national professional counselor organizations.
  - c. The ex-officio members will be selected by their respective organizations.
  - d. The commission may remove any member of the executive committee as provided in bylaws.
  - e. The executive committee shall meet at least annually.
  - f. The executive committee has the following duties and responsibilities to:
    - (1) Recommend to the entire commission changes to the rules or bylaws, changes to this compact legislation, fees paid by compact member states such as annual dues, and any commission compact fee charged to licensees for the privilege to practice;

- (2) Ensure compact administration services are appropriately provided, contractual or otherwise;
- (3) Prepare and recommend the budget;
- (4) Maintain financial records on behalf of the commission;
- (5) Monitor compact compliance of member states and provide compliance reports to the commission;
- (6) Establish additional committees as necessary; and
- (7) Execute other duties as provided in rules or bylaws.

5. Meetings of the commission.

- a. All meetings must be open to the public, and public notice of meetings must be given in the same manner as required under the rulemaking provisions in article XI.
- b. The commission or the executive committee or other committees of the commission may convene in a closed, nonpublic meeting if the commission or executive committee or other committees of the commission must discuss:
  - (1) Noncompliance of a member state with its obligations under the compact;
  - (2) The employment, compensation, discipline or other matters, practices or procedures related to specific employees, or other matters related to the commission's internal personnel practices and procedures;
  - (3) Current, threatened, or reasonably anticipated litigation;
  - (4) Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;
  - (5) Accusing any person of a crime or formally censuring any person;
  - (6) Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
  - (7) Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
  - (8) Disclosure of investigative records compiled for law enforcement purposes;
  - (9) Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact; or
  - (10) Matters specifically exempted from disclosure by federal or member state statute.



- liability caused by the intentional, willful, or wanton misconduct of that person.
- b. The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against which the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing herein may be construed to prohibit that person from retaining that person's own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional, willful, or wanton misconduct.
  - c. The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional, willful, or wanton misconduct of that person.

#### **ARTICLE X - DATA SYSTEM**

1. The commission shall provide for the development, maintenance, operation, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.
2. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this compact is applicable as required by the rules of the commission, including:

  - a. Identifying information;
  - b. Licensure data;
  - c. Adverse actions against a license or privilege to practice;
  - d. Nonconfidential information related to alternative program participation;
  - e. Any denial of application for licensure, and the reason for such denial;
  - f. Current significant investigative information; and
  - g. Other information that may facilitate the administration of this compact, as determined by the rules of the commission.
3. Investigative information pertaining to a licensee in any member state will only be available to other member states.

4. The commission promptly shall notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state will be available to any other member state.
5. Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.
6. Any information submitted to the data system which is subsequently required to be expunged by the laws of the member state contributing the information must be removed from the data system.

### **ARTICLE XI - RULEMAKING**

1. The commission shall promulgate reasonable rules to effectively and efficiently achieve the purpose of the compact. Notwithstanding the foregoing, in the event the commission exercises its rulemaking authority in a manner beyond the scope of the purposes of the compact, or the powers granted under this compact, then such an action by the commission is invalid and has no force or effect.
2. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted under this article. Rules and amendments become binding as of the date specified in each rule or amendment.
3. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact within four years of the date of adoption of the rule, the rule has no further force and effect in any member state.
4. Rules or amendments to the rules must be adopted at a regular or special meeting of the commission.
5. Before promulgation and adoption of a final rule or rules by the commission, and at least thirty days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:
  - a. On the website of the commission or other publicly accessible platform; and
  - b. On the website of each member state's professional counseling licensing board, other publicly accessible platform, or the publication in which each state would otherwise publish proposed rules.
6. The notice of proposed rulemaking must include:
  - a. The proposed time, date, and location of the meeting at which the rule will be considered and voted upon;
  - b. The text of the proposed rule or amendment and the reason for the proposed rule;

- c. A request for comments on the proposed rule from any interested person; and
    - d. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.
- 7. Before adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which must be made available to the public.
- 8. The commission shall grant an opportunity for a public hearing before the commission adopts a rule or amendment if a hearing is requested by:
  - a. At least twenty-five persons;
  - b. A state or federal governmental subdivision or agency; or
  - c. An association having at least twenty-five members.
- 9. If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the commission shall publish the mechanism for access to the electronic hearing.
  - a. All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.
  - b. Hearings must be conducted in a manner providing each person that wishes to comment a fair and reasonable opportunity to comment orally or in writing.
  - c. All hearings will be recorded. A copy of the recording will be made available on request.
  - d. This article may not be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this article.
- 10. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.
- 11. If no written notice of intent to attend the public hearing by interested parties is received, the commission may proceed with promulgation of the proposed rule without a public hearing.
- 12. By majority vote of all members, the commission shall take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.
- 13. Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or

hearing, provided that the usual rulemaking procedures provided in the compact and in this article must be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this subsection, an emergency rule is one that must be adopted immediately to:

- a. Meet an imminent threat to public health, safety, or welfare;
  - b. Prevent a loss of commission or member state funds;
  - c. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or
  - d. Protect public health and safety.
14. The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions must be posted on the website of the commission. The revision is subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge must be made in writing and delivered to the chair of the commission before the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

## **ARTICLE XII - OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT**

### **1. Oversight.**

- a. The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated under this compact have standing as statutory law.
  - b. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the commission.
  - c. The commission must be entitled to receive service of process in the proceeding and must have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the commission renders a judgment or order void as to the commission, this compact, or promulgated rules.
2. If the commission determines a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:
- a. Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default or any

- other action to be taken by the commission, or any combination of these requirements; and
- b. Provide remedial training and specific technical assistance regarding the default.
  3. If a state in default fails to cure the default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the member states, and all rights, privileges, and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.
  4. Termination of membership in the compact must be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate must be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.
  5. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.
  6. The commission may not pay any costs related to a state that is found to be in default or that has been terminated from the compact, unless agreed upon in writing between the commission and the defaulting state.
  7. The defaulting state may appeal the action of the commission by petitioning the United States district court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing member must be awarded all costs of the litigation, including reasonable attorney's fees.
  8. Dispute resolution.

    - a. Upon request by a member state, the commission shall attempt to resolve disputes related to the compact which arise among member states and between member and nonmember states.
    - b. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.
  9. Enforcement.

    - a. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.
    - b. By majority vote, the commission may initiate legal action in the United States district court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member must be awarded all costs of the litigation, including reasonable attorney's fees.

- c. The remedies provided under the compact are not the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

### **ARTICLE XIII - DATE OF IMPLEMENTATION OF THE COUNSELING COMPACT COMMISSION AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT**

1. The compact becomes effective on the date on which the compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, are limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to implement and administer the compact.
2. Any state that joins the compact subsequent to the commission's initial adoption of the rules must be subject to the rules existing on the date on which the compact becomes law in that state. Any rule previously adopted by the commission has the full force and effect of law on the day the compact becomes law in that state.
3. Any member state may withdraw from this compact by enacting a statute repealing the compact.
  - a. A member state's withdrawal may not take effect until six months after enactment of the repealing statute.
  - b. Withdrawal does not affect the continuing requirement of the withdrawing state's professional counseling licensing board to comply with the investigative and adverse action reporting requirements of this compact before the effective date of withdrawal.
4. This compact may not be construed to invalidate or prevent any professional counseling licensure agreement or other cooperative arrangement between a member state and a nonmember state which does not conflict with the provisions of this compact.
5. This compact may be amended by the member states. An amendment to this compact may not become effective and binding upon any member state until the amendment is enacted into the laws of all member states.

### **ARTICLE XIV - CONSTRUCTION AND SEVERABILITY**

This compact must be liberally construed so as to effectuate the purposes of the compact. The provisions of this compact must be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any member state or of the United States of America or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability of the compact to any government, agency, person, or circumstance may not be affected thereby. If this compact is held contrary to the constitution of any member state, the compact must remain in full force and effect as to the remaining member states and as to the member state affected as to all severable matters.

### **ARTICLE XV - BINDING EFFECT OF COMPACT AND OTHER LAWS**

1. A licensee providing professional counseling services in a remote state under the privilege to practice shall adhere to the laws and regulations, including scope of practice, of the remote state.
2. Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with the compact.
3. Any laws in a member state in conflict with the compact are superseded to the extent of the conflict.
4. Any lawful actions of the commission, including all rules and bylaws properly promulgated by the commission, are binding upon the member states.
5. All permissible agreements between the commission and the member states are binding in accordance with the terms of the agreements.
6. In the event any provision of the compact exceeds the constitutional limits imposed on the legislature of any member state, the provision must be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

Approved April 26, 2023

Filed April 27, 2023

## CHAPTER 392

### SENATE BILL NO. 2065

(Workforce Development Committee)  
(At the request of the North Dakota Board of Reflexology)

AN ACT to create and enact sections 43-49-04.1 and 43-49-14 of the North Dakota Century Code, relating to the regulation of reflexologists; to amend and reenact sections 43-49-01, 43-49-02, 43-49-04, 43-49-05, 43-49-06, 43-49-08, 43-49-09, 43-49-12, and 43-49-13 of the North Dakota Century Code, relating to licensure of reflexologists; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 43-49-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-49-01. Definitions.**

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

1. "Board" means the North Dakota board of reflexology.
2. "Reflexologist" means a personan individual who uses special pressure techniques on the reflexes in the human feet, hands, and ears and who has studied the principles of reflexology and anatomy and physiology generally included in a regular course of studyis licensed to practice reflexology.
3. "Reflexology" means the application of specific or alternating pressure by the use of the practitioner's hands, thumbs, and fingers, and accepted tools, to reflex points in the client's hands, feet, or ears using alternating pressure, and suchreflexes using techniques such as thumb walking, finger walking, hook and back up, and rotation on a reflex.

**SECTION 2. AMENDMENT.** Section 43-49-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-49-02. Board - Appointment - Terms.**

The board consists of three licensed reflexologistsmembers appointed by the governor except the first board need not consist of licensed members. A person must be a member of the North Dakota reflexology association in order to be eligible for appointment to, and continued membership on, the board. Each member shall hold a current license issued by the board. The members must be appointed for three years, staggered so that the term of one member expires as of July first of each year. Each member shall hold office until that member's successor is appointed and qualified. In July of each year the board shall meet at some convenient place within the state and shall elect one member as president, one member as vice president, and one member as 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. The board may employ, and set the compensation of, employees to assist the secretary-treasurerboard in the performance of the secretary-treasurer'sboard's

duties. The board shall hold meetings ~~in the state~~ as determined necessary by the board to discharge its duties. Board members are entitled to receive ~~twenty-five dollars per day and travel expenses~~ compensation in an amount provided by law for state officials and employees when performing the official duties of the board. ~~In addition, the secretary-treasurer is to be paid an extra nine dollars per meeting.~~

**SECTION 3. AMENDMENT.** Section 43-49-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-49-04. Duties of the secretary-treasurer - Compensation - Expenses of the board.**

The secretary-treasurer of the board shall:

1. Keep a record of:
  - a. The name and, address, electronic mail address, if available, and phone number of every person who is licensed to practice in the state;
  - b. The license number and date of issuance of the license for each licensed reflexologist;
  - c. The renewal date of each license; and
  - d. Record of payments received; and
  - e. Other information as required by the board.
2. Furnish, upon demand, any person a certified copy of records upon payment of a ten dollar fee plus twenty-five cents for each page copied.
3. Prepare and submit to the governor ~~and the North Dakota reflexology association~~ a detailed annual report on the income and expenses of the board and a list of licensed reflexologists.

**SECTION 4.** Section 43-49-04.1 of the North Dakota Century Code is created and enacted as follows:

**43-49-04.1. Board rules.**

The board may adopt and enforce rules as necessary to implement this chapter.

**SECTION 5. AMENDMENT.** Section 43-49-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-49-05. Exemptions.**

This chapter does not apply to the activities or services of physicians, chiropractors, physical therapists, cosmetologists, registered nurses, massage therapists, or members of other professions licensed, certified, or registered by the state who may on occasion apply pressure to ~~the reflex points in the hands, feet, and ears~~ reflexes in the course of their work. This chapter does not apply to an individual who takes a self-help class and applies reflexology without pay on immediate family members or the individual's body.

**SECTION 6. AMENDMENT.** Section 43-49-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-49-06. Requisites for licensure.**

Any ~~person~~individual who is eighteen years of age or more and is either a bona fide resident of this state for at least one month immediately preceding the application or is a resident of another state who is practicing reflexology in this state shall submit an application for licensure to the secretary-treasurer of the board. An applicant is entitled to be issued a license as a reflexologist if the applicant:

1. Presents a diploma, certification, or completion credentials issued by a reputable school of reflexology which has submitted its curriculum to the board and has been approved by the board which meets or exceeds a minimum of one hundred hours.
2. Presents three character references citing that the applicant is of good moral character.
3. Passes a ~~reasonable demonstrative~~practical and written examination in reflexology. If there is an applicant for examination, the board shall conduct an examination at least once a year at a time and place designated by the board. Examinations must be held in the state. An applicant must receive a ~~general average score on the examination of seventy five percent in all subjects involved and no score of less than fifty percent in any one subject~~score of eighty percent or higher on the practical examination and a seventy percent or higher on the written examination. The board shall notify the applicant of the applicant's score. An applicant who fails to pass ~~any subject~~either the written or practical examination is entitled to a re-examination on ~~that subject within six months~~the portion that was failed upon payment of an additional fee of fifty dollars or an amount established by the board. ~~Two re-examinations exhaust the privilege under the original application.~~
4. Pays a licensing fee of ~~seventy five~~one hundred fifty dollars or an amount set by the board.

**SECTION 7. AMENDMENT.** Section 43-49-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-49-08. Restriction on use of title.**

A reflexologist licensed by the board may be held out as a "licensed reflexologist" and may use the abbreviation "L.R." as a part of or immediately following that ~~person's~~individual's name, in connection with the profession. No ~~person~~individual may use the title "licensed reflexologist" unless licensed in accordance with this chapter.

**SECTION 8. AMENDMENT.** Section 43-49-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-49-09. License - Display - Renewal - Renewal fee.**

Each license must be conspicuously displayed at the place of practice. ~~A license must be recorded within thirty days after issuance in the office of the recorder, unless the board of county commissioners designates a different official, in any county where the reflexologist practices.~~

A license must be renewed before June first of each year. A license renewed June first or later requires a late fee of fifty dollars or an amount established by the board. The secretary-treasurer of the board shall ~~mail notice of renewal to~~notify in writing each licensed reflexologist's ~~address~~reflexologist as shown in the records of the

board at least thirty days before the expiration of the license. The notice must include any requests for information as deemed necessary for renewal as required by the board. The licensed reflexologist may renew a license by sending a renewal fee of the amount set by the board, not to exceed one hundred dollars, to the secretary-treasurer of the board, ~~and submitting. The licensed reflexologist shall submit~~ proof that ~~the reflexologist has attended a seminar on reflexology at least one of completing twelve continuing education credits during the preceding three years. A license that is not renewed by June thirtieth lapses.~~

**SECTION 9. AMENDMENT.** Section 43-49-12 of the North Dakota Century Code is amended and reenacted as follows:

**43-49-12. Revocation of licensing.**

The license of a licensed reflexologist ~~board~~ may be ~~revoked, suspended, deny, refuse to renew, revoke, suspend,~~ or annulled by the board place on probation a license issued under this chapter upon any one or more of the following grounds:

1. That the person is ~~guilty of gross~~ Gross malpractice or incompetence in the practice of reflexology.
2. That the person's mental or physical health ~~endangers public health or safety~~.
3. That the person ~~fails to comply with rules~~ Violation of the provisions under this chapter or the rules adopted by the board.
4. ~~3.~~ That the person is ~~guilty of~~ Advertising by means of knowingly false or deceptive advertising statements.
5. ~~4.~~ That the person ~~engages in~~ Grossly unprofessional or dishonest conduct.
5. Fraud or deceit in admission to the practice of reflexology.

**SECTION 10. AMENDMENT.** Section 43-49-13 of the North Dakota Century Code is amended and reenacted as follows:

**43-49-13. Administrative procedures.**

Any person may file a written complaint with the board seeking disciplinary action against a reflexologist for violations of this chapter or rules adopted by the board. If the board determines that a complaint alleges facts that, if true, would require denial, revocation, suspension, or nonrenewal or other disciplinary action of a licensed reflexologist, the board shall conduct a hearing. Any hearing regarding denial of a license or a disciplinary action must be held pursuant to chapter 28-32. The board may dismiss a complaint that does not state facts that warrant action.

**SECTION 11.** Section 43-49-14 of the North Dakota Century Code is created and enacted as follows:

**43-49-14. Penalty.**

It is a class B misdemeanor for an individual to advertise as a reflexologist or practice reflexology without a license.

Approved April 4, 2023

Filed April 5, 2023

# OFFICES AND OFFICERS

## CHAPTER 393

### HOUSE BILL NO. 1235

(Representatives Dockter, Bosch, Heinert, Stemen)  
(Senators Cleary, K. Roers)

AN ACT to create and enact a new section to chapter 44-01 of the North Dakota Century Code, relating to term beginning dates for elected state government officials.

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

**SECTION 1.** A new section to chapter 44-01 of the North Dakota Century Code is created and enacted as follows:

#### **Elected state officers - Date to qualify.**

The agriculture commissioner, attorney general, auditor, insurance commissioner, public service commissioners, secretary of state, superintendent of public instruction, tax commissioner, and treasurer shall qualify on the first day of December next succeeding their election and shall enter upon the discharge of the duties of their respective offices.

Approved April 6, 2023

Filed April 10, 2023

## CHAPTER 394

### SENATE BILL NO. 2232

(Senators Luick, Larson)  
(Representative Strinden)

AN ACT to create and enact a new subsection to section 44-04-18.7 of the North Dakota Century Code, relating to exempting crime scene images of minors; and to amend and reenact section 44-04-06, subsection 5 of section 44-04-19.1, subsection 4 of section 44-04-20, and subsection 1 of section 44-04-21.1 of the North Dakota Century Code, relating to law violations and open record and open meeting laws.

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

**SECTION 1. AMENDMENT.** Section 44-04-06 of the North Dakota Century Code is amended and reenacted as follows:

##### **44-04-06. Peace officers to report law violations.**

The state's attorney, assistant state's attorney, sheriff, deputy sheriff, or peace officer of any county, township, city in this state, having any evidence, knowledge, or notice of any violation of any liquor, ~~gambling, cigarette, snuff, pool hall, bawdyhouse, prostitution, white slave, or habit-forming drug~~ laws of North Dakota shall investigate and seek evidence of the violation and the names of witnesses by whom the violation may be proved. ~~Any~~<sup>A</sup> peace officer shall report the information to the state's attorney of the county in which the violation occurs and shall assist the state's attorney in the prosecution of the violators of said laws.

<sup>216</sup> **SECTION 2.** A new subsection to section 44-04-18.7 of the North Dakota Century Code is created and enacted as follows:

Unless otherwise provided by law, descriptions of crime scene images that include a minor or a minor victim or parts of a record containing such descriptions are exempt.

**SECTION 3. AMENDMENT.** Subsection 5 of section 44-04-19.1 of the North Dakota Century Code is amended and reenacted as follows:

5. "Attorney consultation" means any discussion between the members of a governing body and its attorney in instances in which the governing body seeks or receives the attorney's advice regarding and in anticipation of reasonably predictable or pending civil or criminal litigation or adversarial administrative proceedings or to receive its attorney's advice and guidance on the legal risks, strengths, and weaknesses of an action of a public entity which, if held in public, would have an adverse fiscal effect on the entity. All other discussions beyond the attorney's advice and guidance must be made in the open, unless otherwise provided by law. All statements made by a participant or between participants during an executive session held for the

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<sup>216</sup> Section 44-04-18.7 was also amended by section 2 of House Bill No. 1481, chapter 236, and section 1 of House Bill No. 1262, chapter 397.

purpose of attorney consultation are exempt if the statements relate to the subject for which attorney consultation was established. Mere presence or participation of an attorney at a meeting is not sufficient to constitute attorney consultation.

**SECTION 4. AMENDMENT.** Subsection 4 of section 44-04-20 of the North Dakota Century Code is amended and reenacted as follows:

4. The notice required in this section must be posted at the principal office of the governing body holding the meeting, if such exists, and at the location of the meeting on the day of the meeting. In addition, unless all the information contained in the notice was previously filed with the appropriate office under subsection 3, the notice must be filed in the office of the secretary of state for state-level bodies or for public entities defined in subdivision c of subsection 13 of section 44-04-17.1, the city auditor or designee of the city for city-level bodies, the county auditor or designee of the county for all other bodies, ~~or.~~ If the public entity has a website, notice also must be posted on the public entity's website. This subsection does not apply to meetings of the legislative assembly or any committee thereof.

**SECTION 5. AMENDMENT.** Subsection 1 of section 44-04-21.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Any interested person may request an attorney general's opinion to review a written denial of a request for records under section 44-04-18, a denial of access to a meeting under section 44-04-19, or other alleged violation of section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21 by any public entity other than the legislative assembly or any committee thereof. A request made under this section must be made within thirty days of the alleged violation, except that a request based on allegations that a meeting occurred without the notice required by section 44-04-20, must be made within ninety days of the alleged violation. In preparing an opinion under this section, the attorney general has discretion to obtain and review a recording made under section 44-04-19.2. The attorney general may request and obtain information claimed to be exempt or confidential for the purpose of determining whether the information is exempt or confidential. Any such information may not be released by the attorney general and may be returned to the provider of the information. The attorney general shall issue to the public entity involved an opinion on the alleged violation, which may be a summary opinion, unless the request is withdrawn by the person requesting the opinion or a civil action has been filed involving the possible violation. The attorney general may decline to issue an opinion if the person requesting the opinion has made more than one request within the last thirty days or more than five requests for opinions in twelve months. If the request pertains to a public entity as defined in subdivision c of subsection 13 of section 44-04-17.1, the opinion must be issued to the public entity providing the public funds. In any opinion issued under this section, the attorney general shall base the opinion on the facts given by the public entity.

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 395

### HOUSE BILL NO. 1054

(Government and Veterans Affairs Committee)  
(At the request of the Secretary of State)

AN ACT to amend and reenact subsections 1 and 5 of section 44-06.1-20 of the North Dakota Century Code, relating to notary commissions.

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

**SECTION 1. AMENDMENT.** Subsections 1 and 5 of section 44-06.1-20 of the North Dakota Century Code are amended and reenacted as follows:

1. An individual qualified under subsection 2 may apply to the secretary of state for a commission as a notary public. The applicant shall comply with and provide on a form prescribed by the secretary of state, the information required by the secretary of state and submit the required application fee of thirty-six dollars.
5. On compliance with subsections 1, 2, 3, and 4, the secretary of state shall issue a notary public commission to an applicant for a term of four years, unless sooner removed by the secretary of state. The notary shall post the commission in a conspicuous place in the notary's office or place of employment. A notary public commission may be renewed up to sixty days before the commission's expiration date by reapplying in the same manner as required for an original commission.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 396

### SENATE BILL NO. 2047

(Judiciary Committee)  
(At the request of the Supreme Court)

AN ACT to amend and reenact subsection 9 of section 44-04-17.1 of the North Dakota Century Code, relating to the definition of meeting.

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

**SECTION 1. AMENDMENT.** Subsection 9 of section 44-04-17.1 of the North Dakota Century Code is amended and reenacted as follows:

9. a. "Meeting" means a formal or informal gathering or a work session, whether in person or through any electronic means, 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 the 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" does not include:
  - (1) A chance or social gathering at which public business is not considered;
  - (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;
  - (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;
  - (4) Training seminars at which no other public business is considered or discussed; and
  - (5) Administration of examinations by a regulatory board when no other public business is considered or discussed.
- 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.

- d. Notwithstanding subdivisions a and b, "meeting" does not include any meeting of the judicial branch or a committee or workgroup of the judicial branch. Such meetings are governed by section 5 of article XI of the Constitution of North Dakota.

Approved April 10, 2023

Filed April 11, 2023

## CHAPTER 397

### HOUSE BILL NO. 1262

(Representatives O'Brien, Nelson, Pyle, Wagner)  
(Senators Cleary, Lee)

AN ACT to amend and reenact subsection 9 of section 44-04-18.7 of the North Dakota Century Code, relating to exempt records and body camera images.

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

<sup>217</sup> **SECTION 1. AMENDMENT.** Subsection 9 of section 44-04-18.7 of the North Dakota Century Code is amended and reenacted as follows:

9. An image taken ~~by a law enforcement officer or a firefighter~~ with a body camera or similar device and which is taken in a private place is an exempt record.

Approved March 30, 2023

Filed April 3, 2023

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<sup>217</sup> Section 44-04-18.7 was also amended by section 2 of House Bill No. 1481, chapter 236, and section 2 of Senate Bill No. 2232, chapter 394.

## CHAPTER 398

### HOUSE BILL NO. 1463

(Representatives Porter, Bosch, D. Johnson, Lefor, Schauer)

AN ACT to amend and reenact section 44-04-21 of the North Dakota Century Code, relating to legislative voting requirements.

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

**SECTION 1. AMENDMENT.** Section 44-04-21 of the North Dakota Century Code is amended and reenacted as follows:

#### **44-04-21. Open voting at public meetings required - Results recorded in minutes.**

1. Unless otherwise specifically provided by law, all votes of whatever kind taken at any public meeting governed by the provisions of section 44-04-19 must be open, public votes, and all nonprocedural votes must be recorded roll call votes, with the votes of each member being made public at the open meeting. Procedural votes must be recorded roll call votes upon the request of any member of a governing body holding a meeting subject to this section. As used in this section, "nonprocedural" should be broadly interpreted and includes all votes that pertain to the merits of the matter before the governing body.
2. Minutes must be kept of all open meetings and are records subject to section 44-04-18. The minutes must include, at a minimum:
  - a. The names of the members attending the meeting;
  - b. The date and time the meeting was called to order and adjourned;
  - c. A list of topics discussed regarding public business;
  - d. A description of each motion made at the meeting and whether the motion was seconded;
  - e. The results of every vote taken at the meeting; and
  - f. The vote of each member on every recorded roll call vote.

Notwithstanding subsection 8 of section 44-04-18, the disclosure of minutes kept under this subsection may not be conditioned on the approval of the minutes by the governing body.

3. Subsection 1 does not apply to a nonprocedural vote relating to the consideration of an amendment by a legislative committee or the legislative assembly during a legislative session, unless otherwise required by legislative rule.

Approved April 11, 2023

Filed April 17, 2023

## CHAPTER 399

### HOUSE BILL NO. 1083

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

AN ACT to amend and reenact section 44-06.1-13.1 of the North Dakota Century Code, relating to the adoption of the Revised Uniform Law on Notarial Acts (2021).

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

**SECTION 1. AMENDMENT.** Section 44-06.1-13.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **44-06.1-13.1. Notarial ~~Act~~ performed for remotely located individual.**

1. As used in this section, unless the context otherwise requires:
  - a. "Communication technology" means an electronic device or process that:
    - (1) Allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and
    - (2) When necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment.
  - b. "Foreign state" means a jurisdiction other than the United States, a state, or a federally recognized Indian tribe.
  - c. "Identity proofing" means a process or service by which a third person provides a notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.
  - d. "Outside the United States" means a location outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory, insular possession, or other location subject to the jurisdiction of the United States.
  - e. "Remotely located individual" means an individual who is not in the physical presence of the notary public who performs a notarial act under subsection 3.
2. A remotely located individual may comply with section 44-06.1-05 by using communication technology to appear before a notary public.
3. A notary public located in this state may ~~perform a notarial act using~~ use communication technology to perform a notarial act for a remotely located individual if:

- a. The notary public:
  - (1) Has personal knowledge under subsection 1 of section 44-06.1-06 of the identity of the remotely located individual;
  - (2) Has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public under subsection 2 of section 44-06.1-06 or this section; or
  - (3) Has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing;
- b. The notary public is able reasonably to confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the individual executed a signature;
- c. The notary public, or a person acting on behalf of the notary public, creates an audiovisual recording of the performance of the notarial act; and
- d. For a remotely located individual located outside the United States:
  - (1) The record:
    - (a) Is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of the United States; or
    - (b) Involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States; and
  - (2) The act of making the statement or signing the record is not prohibited by the foreign state in which the remotely located individual is located.
4. A notary public located in this state may use communication technology under subsection 3 to take an acknowledgment of a signature on a tangible record physically present before the notary public if the record is displayed to and identified by the remotely located individual during the audiovisual recording under subdivision c of subsection 3.
5. The requirement under subdivision b of subsection 3 for the performance of a notarial act with respect to a tangible record not physically present before the notary public is satisfied if:
  - a. The remotely located individual:
    - (1) During the audiovisual recording under subdivision c of subsection 3, signs:
      - (a) The record; and

- (b) A declaration, in substantially the following form, that is part of or securely attached to the record:

I declare under penalty of perjury that the record of which this declaration is a part or to which it is attached is the same record on which (name of notary public), a notary public, performed a notarial act and before whom I appeared by means of communication technology on (date).

\_\_\_\_\_  
Signature of remotely located individual

\_\_\_\_\_  
Printed name of remotely located individual; and

- (2) Sends the record and declaration to the notary public not later than three days after the notarial act was performed; and

b. The notary public:

- (1) In the audiovisual recording under subdivision c of subsection 3, records the individual signing the record and declaration; and

- (2) After receipt of the record and declaration from the individual, executes a certificate of notarial act under section 44-06.1-14 which must include a statement in substantially the following form:

I (name of notary public) witnessed, by means of communication technology, (name of remotely located individual) sign the attached record and declaration on (date).

6. A notarial act performed in compliance with subsection 5 complies with subdivision a of subsection 1 of section 44-06.1-14 and is effective on the date the remotely located individual signed the declaration under subparagraph b of paragraph 1 of subdivision a of subsection 5.
7. Subsection 5 does not preclude use of another procedure to satisfy subdivision b of subsection 3 for a notarial act performed with respect to a tangible record.
8. A notary public located in this state may use communication technology under subsection 3 to administer an oath or affirmation to a remotely located individual if, except as otherwise provided by another law of this state, the notary public:
- a. Identifies the individual under subdivision a of subsection 3;
  - b. Creates or causes the creation under subdivision c of subsection 3 of an audiovisual recording of the individual taking the oath or affirmation; and
  - c. Retains or causes the retention under subsection 11 of the recording.
9. If a notarial act is performed under this section, the certificate of notarial act required by under section 44-06.1-14 and the short-form certificate provided

~~in~~ under section 44-06.1-19 must indicate the notarial act was performed using communication technology.

~~5-10.~~ A short-form certificate ~~provided in~~ under section 44-06.1-19 for a notarial act subject to this section is sufficient if it:

- a. Complies with the rules adopted under subdivision a of subsection ~~813~~; or
- b. Is in the form ~~provided in~~ under section 44-06.1-19 and contains a statement in substantially ~~as follows~~ the following form: "This notarial act involved the use of communication technology."

~~6-11.~~ A notary public, a guardian, conservator, or agent of a notary public, or a personal representative of a deceased notary public shall retain the audiovisual recording created under subdivision c of subsection 3 or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. Unless a different period is required by rule adopted under subdivision d of subsection ~~813~~, the recording must be retained for ~~a period of~~ at least ten years ~~after the recording is made~~.

~~7-12.~~ Before a notary public performs the notary public's initial notarial act under this section, the notary public must notify the secretary of state that the notary public will be performing notarial acts with respect to remotely located individuals and identify the technologies the notary public intends to use. If the secretary of state has established standards under subsection ~~813~~ and section 44-06.1-25 for approval of communication technology or identity proofing, the communication technology and identity proofing must conform to the standards.

~~8-13.~~ In addition to adopting rules under section 44-06.1-25, the secretary of state may adopt rules ~~under this section~~ regarding performance of a notarial act under this section. The rules may:

- a. Prescribe the means of performing a notarial act involving a remotely located individual using communication technology;
- b. Establish standards for communication technology and identity proofing;
- c. Establish requirements or procedures to approve providers of communication technology and the process of identity proofing; ~~and~~
- d. Establish standards and a period for the retention of an audiovisual recording created under subdivision c of subsection 3; and
- e. Prescribe methods for a notary public to confirm under subsections 4 and 5 the identity of a tangible record.

~~9-14.~~ Before adopting, amending, or repealing a rule governing performance of a notarial act with respect to a remotely located individual, the secretary of state shall consider:

- a. The most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting organizations and the recommendations of the national association of secretaries of state;

- b. Standards, practices, and customs of other jurisdictions that have laws substantially similar to this section; and
  - c. The views of governmental officials and entities and other interested persons.
- ~~40-15.~~ By allowing its communication technology or identity proofing to facilitate a notarial act for a remotely located individual or by providing storage of the audiovisual recording created under subdivision c of subsection 3, the provider of the communication technology, identity proofing, or storage appoints the secretary of state as the provider's agent for service of process in any civil action in this state related to the notarial act.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 400

### HOUSE BILL NO. 1155

(Representatives Heilman, Christensen, Kasper, Koppelman, Prichard, Rios, M.  
Ruby, Vetter)  
(Senators Clemens, Larson, Paulson, Wobbema)

AN ACT to create and enact a new section to chapter 44-08 of the North Dakota Century Code, relating to sanctuary status.

#### 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:

#### **Prohibition - Sanctuary - Immigration - Void.**

1. Notwithstanding any other provision of law, the state, a political subdivision, or institution of higher education under the supervision of the state board of higher education or any agent or employee of the state, a political subdivision, or the institution of higher education may not adopt or implement a policy, order, or ordinance that:
  - a. Limits or prohibits an individual from communicating or cooperating with federal agencies or officials to verify or report the immigration status of an individual; or
  - b. Grants a noncitizen unlawfully present in the United States the right to lawful presence or status within the state, a political subdivision, or the institution of higher education.
2. Any policy, order, or ordinance adopted in violation of this section is void.

Approved April 7, 2023

Filed April 10, 2023

## CHAPTER 401

### SENATE BILL NO. 2124

(Senators Davison, Dever, Hogan)  
(Representatives Heinert, Sanford)

AN ACT to amend and reenact subsection 2 of section 44-08-04 of the North Dakota Century Code, relating to meal reimbursement.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 44-08-04 of the North Dakota Century Code is amended and reenacted as follows:

2. For travel within the state, the following rates for each quarter of any twenty-four-hour period must be used:
  - a. First quarter is from six a.m. to twelve noon and the sum must be ~~seventy-nine~~ nine dollars. First quarter reimbursement may not be made if travel began after seven a.m.
  - b. Second quarter is from twelve noon to six p.m. and the sum must be ~~tenfourteen~~ fourteen dollars and ~~and fifty cents~~.
  - c. Third quarter is from six p.m. to twelve midnight and the sum must be ~~seventeen~~ twenty-two dollars and ~~and fifty cents~~.
  - d. Fourth quarter is from twelve midnight to six a.m. and the sum must be the actual lodging expenses not to exceed 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.

Approved April 12, 2023

Filed April 13, 2023

# PRINTING LAWS

## CHAPTER 402

### HOUSE BILL NO. 1056

(Government and Veterans Affairs Committee)  
(At the request of the Office of Management and Budget)

AN ACT to amend and reenact section 46-02-09 of the North Dakota Century Code, relating to state printing requirements; and to repeal section 46-02-20 of the North Dakota Century Code, relating to in-plant print shops.

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

**SECTION 1. AMENDMENT.** Section 46-02-09 of the North Dakota Century Code is amended and reenacted as follows:

**46-02-09. Printing classifications 3 and 6 - Procured by the office of management and budget.**

All state printing in classifications 3 and 6 must be purchased by the office of management and budget, or delegated, according to chapter 54-44.4, unless the work is done by the central duplicating service of the office of management and budget or determined to be the most cost-effective or advantageous to print on agency printers to meet the identified printing needs of the agency.

**SECTION 2. REPEAL.** Section 46-02-20 of the North Dakota Century Code is repealed.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 403

### HOUSE BILL NO. 1197

(Representatives Pyle, Hanson, Ostlie, Roers Jones, Wagner)  
(Senators Dwyer, Patten, K. Roers)

AN ACT to amend and reenact section 46-05-01 of the North Dakota Century Code, relating to publication of legal notices by newspapers.

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

**SECTION 1. AMENDMENT.** Section 46-05-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **46-05-01. Newspapers qualified to do legal printing - File copies with state historical society - Publishing notices in adjoining county.**

1. As used in this section:
  - a. "E-edition" means a digital facsimile of a newspaper print edition which is substantially the same in both format and content as the print edition.
  - b. "Publish" means the dissemination in the print edition of a qualified newspaper or in the newspaper's e-edition if it has one, or in both.
2. Before anya newspaper in this state is qualified to publish anya legal notice or anya matter required by law to be printed or published in somea newspaper in the state, or any public notice for anya political subdivision within this state, the newspaper must:
  4. a. Have been established in a regular and continuous circulation of at least one year, with a bona fide subscription list of at least one hundred fifty regular subscribers;
  2. b. Be nonsectarian and printed in English; and
  3. c. Have been admitted to the United States mails and have complied with the requirements of the federal laws governing periodicals mailing privileges for at least one year.
3. The owner or publisher of each legal newspaper shall send to the state historical society, to the address designated by the director, one copy of each print and e-edition issue of the newspaper. In a county in which no newspaper is published, anya notice required by law to be published may be published in a newspaper published in an adjoining county and having a general circulation in the county.

Approved March 14, 2023

Filed March 15, 2023

# PROPERTY

## CHAPTER 404

### HOUSE BILL NO. 1188

(Representatives Louser, Boschee, Cory, Koppelman, Meier, Mock, Steiner,  
VanWinkle)  
(Senators Larsen, Larson)

AN ACT to create and enact a new chapter to title 47 of the North Dakota Century Code, relating to the prohibition of unfair service agreements.

#### **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:

#### **Definitions.**

As used in this chapter:

1. "Recording" means the act of presenting a patent, deed, mortgage, bill of sale, security agreement, judgment, decree, lien, certificate of sale, or other instrument required to be filed or admitted to record, to the county recorder of the county in which the property is situated, for the purposes of placing the document in the proper books or other storage media as described in section 11-18-01.
2. "Residential real estate" means real property located in this state which is used primarily for personal, family, or household purposes and which is improved by one to four dwelling units.
3. "Service agreement" means a contract under which a person agrees to provide services in connection with the maintenance, purchase, or sale of residential real estate.
4. "Service provider" means a person that enters a service agreement with a person that has an interest in residential real estate.

#### **Unfair service agreements - Prohibition.**

1. A service agreement is deemed unfair under this chapter if the service obligations of the agreement are not to be performed within one year after the agreement is executed and the agreement:
  - a. Purports to be a covenant running with the land as described in section 47-04-25;
  - b. Purports to be binding on future owners of interests in the real property;

- c. Allows for assignment of the right to provide service without notice and agreement of the owner of residential real estate; or
  - d. Purports to create a lien, encumbrance, or other real property security interest.
2. This chapter does not:
- a. Apply to a home warranty or other type of similar product that covers the cost of maintenance of a major housing system for a set period of time from the date a house is sold;
  - b. Apply to an insurance contract;
  - c. Apply to an option to purchase or right of refusal;
  - d. Apply to a maintenance or repair agreement executed between a landowner and a homeowners' association in a common interest community; and
  - e. Impair the rights and remedies provided in chapter 35-27.

**Actions to terminate service agreements for unfairness - Unfair agreements void and unenforceable - Recording of court order.**

1. A person claiming to be subject to an unfair service agreement under this chapter may bring an action to terminate the agreement in the district court of the county in which the property is situated.
2. If a service agreement is found to be unfair under this chapter:
  - a. The agreement is void; and
  - b. A certified copy of the court order finding the service agreement void must be filed for recording along with a copy or memorandum of the original service agreement if the original service agreement is not of record.

**Actual damages - Costs and attorney's fees.**

The district court shall award the actual damages arising from the unfair service agreement, actual attorney's fees proven against the service provider, and costs incurred by the challenging party if the party with an interest in residential real estate subject to a service agreement has been found to be unfair by a district court.

Approved March 23, 2023

Filed March 23, 2023

## CHAPTER 405

### HOUSE BILL NO. 1310

(Representatives Boschee, Cory, Dakane, Louser, Mock, Novak, Roers Jones)  
(Senators Braunberger, Larson)

AN ACT to create and enact a new section to chapter 47-04.1 of the North Dakota Century Code, relating to electric vehicle charging station installation in condominiums; and to provide a penalty.

#### 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:

#### **Electric vehicle charging station installation - Penalty.**

1. For purposes of this section:
  - a. "Reasonable restrictions" means restrictions on the number, size, location, and manner of placement or installation of an electric vehicle charging station on the common or limited common area which do not significantly increase the cost of the electric vehicle charging station or significantly decrease the efficiency or specified performance of the electric vehicle charging station.
  - b. "Electric vehicle charging station" means a station that delivers electricity from a source outside an electric vehicle into one or more electric vehicles. An electric vehicle charging station may include several charge points simultaneously connecting several electric vehicles to the station and any related equipment needed to facilitate charging plug-in electric vehicles.
2. Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in the property, or any bylaw, that either effectively prohibits or unreasonably restricts the installation or use of an electric vehicle charging station within an owner's unit or in a designated parking space, including a deeded parking space, a parking space in an owner's limited common area, or a parking space specifically designated for use by a particular owner, or is in conflict with the provisions of this section is void and unenforceable. This section does not apply to a bylaw that imposes reasonable restrictions on electric vehicle charging stations.
3. An electric vehicle charging station must meet all applicable health and safety standards and requirements imposed by law, rule, or regulation. If approval is required for the installation or use of an electric vehicle charging station, the application for approval must be processed and approved by the administrative body governing the condominium in a manner prescribed by the administrative body governing the condominium and may not be willfully avoided or delayed. The approval or denial of an application must be in writing. If an application is not denied in writing within sixty days from the date

of receipt of the application, the application is deemed approved, unless that delay is the result of a reasonable request for additional information.

4. If the electric vehicle charging station is to be placed in a limited common area, as provided in the required declaration contained in section 47-04.1-02:
  - a. The owner shall obtain approval from the administrative body governing the condominium to install the electric vehicle charging station. The administrative body governing the condominium shall approve the installation in a limited common area if the owner agrees in writing to:
    - (1) Comply with the architectural standards of the administrative body governing the condominium for the installation of the charging station;
    - (2) Engage a licensed contractor to install the charging station;
    - (3) Within fourteen days of approval, provide a certificate of insurance that names the administrative body governing the condominium as an additional insured under the owner's insurance policy pursuant to subdivision c;
    - (4) Pay the costs associated with the installation of and the electricity usage associated with the charging station; and
    - (5) Comply with any other reasonable regulations, including regulations on the number, size, location, and manner of placement or installation of electric vehicle charging stations on the limited common area, as required by the administrative body governing the condominium.
  - b. The owner and each successive owner of the charging station is responsible for:
    - (1) Costs relating to damage to the charging station, common area, limited common area, or any unit resulting from the installation, maintenance, repair, removal, or replacement of the charging station;
    - (2) Costs relating to the maintenance, repair, and replacement of the charging station until it is removed and for the restoration of the common area after removal;
    - (3) The cost of electricity associated with the charging station;
    - (4) Other costs not listed in this subsection which may arise; and
    - (5) Disclosing to prospective buyers the existence of any charging station and the related responsibilities of the owner under this section.
  - c. The owner of the charging station shall, at all times, maintain a liability coverage policy not to exceed the value of a typical condominium owner's policy. Within fourteen days of approval of the application, the owner that submitted the application to install the charging station shall provide the administrative body governing the condominium with the corresponding certificate of insurance. The owner and each successive owner shall provide the administrative body governing the condominium with the certificate of insurance each year.

- d. A homeowner may not be required to maintain a homeowners liability coverage policy for an existing national electrical manufacturers association standard alternating current power plug.
  - e. This section does not prohibit the administrative body governing a condominium from imposing reasonable regulations on the number, size, and manner of placement of an electric vehicle charging station in common areas or limited common areas.
  - f. The administrative body governing the condominium may deny the installation of an electric vehicle charging station based on bona fide safety requirements, consistent with an applicable building code or recognized safety standard, for the protection of persons and property.
5. Except as provided in subsection 6, if installation of an electric vehicle charging station in the owner's designated parking space is impossible or unreasonably expensive, the administrative body governing the condominium may authorize the installation of an electric vehicle charging station for the exclusive use of an owner in a common area that is not a limited common area. The administrative body governing the condominium may deny the installation of an electric vehicle charging station if a reasonable area is not available or the area cannot be reasonably accessed by the owner. If installation is authorized under this subsection, the administrative body governing the condominium shall enter a license agreement with the owner for the use of the space in a common area and the owner shall comply with all the requirements in subsection 4.
  6. The administrative body governing the condominium or owners may install an electric vehicle charging station in a common area for the use of all members of the condominium and develop appropriate terms of use for the charging station.
  7. An administrative body governing the condominium may create a new parking space where one did not previously exist to facilitate the installation of an electric vehicle charging station.
  8. An administrative body governing a condominium which willfully violates this section is liable for actual damages and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars.
  9. Any unit owner installing an electric vehicle charging station shall indemnify and hold the administrative body governing the condominium harmless from all liability, including reasonable attorney's fees incurred by the administrative body governing the condominium resulting from a claim arising out of the installation, maintenance, operation, or use of the electric vehicle charging station.

Approved April 27, 2023

Filed April 28, 2023

## CHAPTER 406

### HOUSE BILL NO. 1135

(Representatives Klemin, Beltz, Motschenbacher, Thomas)  
(Senators Dwyer, Luick, Myrdal)

AN ACT to amend and reenact sections 47-10.1-01 and 47-10.1-02 of the North Dakota Century Code, relating to exceptions to the acquisition of agricultural land by foreign governments.

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

**SECTION 1. AMENDMENT.** Section 47-10.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **47-10.1-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Agricultural land" means land capable of use in the production of agricultural crops, livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit and other horticultural products but does not include any land zoned by a local governmental unit for a use other than, and nonconforming with, agricultural use, but does not include any oil, gas, coal, or other minerals underlying the land, any interest in minerals, separate from the surface, whether acquired by lease or otherwise, or any easements or tracts of land acquired in connection with the extraction, refining, processing, or transportation of minerals.
2. "Controlling interest" means:
  - a. Possession of fifty-one percent or more of the ownership interests in an entity; or
  - b. A percentage ownership interest in an entity of less than fifty-one percent, if the foreign government actually directs the business and affairs of the entity without the requirement or consent of any other party.
3. "Foreign government" means a government or the state-controlled enterprise of a foreign government. The term does not include the government of the United States or its states, territories, or possessions or the government of Canada or its provinces or territories.
4. "Foreign governmental interest in agricultural land" includes the purchase, acquisition, or possession of any absolute or qualified ownership of land by a foreign government, except does not include a leasehold interest.
5. "Interest in agricultural land" includes any leasehold interest.
6. "State-controlled enterprise" means a business enterprise, however denominated, in which a foreign government has a controlling interest.

**SECTION 2. AMENDMENT.** Section 47-10.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**47-10.1-02. Restriction on acquisition - Exceptions.**

1. An individual who is not a citizen of the United States, a citizen of Canada, or a permanent resident alien of the United States may not acquire directly or indirectly any interest in agricultural land unless:
  - a. The individual is an alien entitled to enter the United States under the provisions of a treaty of commerce and navigation between the United States and the foreign state of which the individual is a national, solely to develop and direct the operations of an enterprise in which the individual has invested or to direct the operations of an enterprise in which the individual is actively in the process of investing a substantial amount of capital;
  - b. The individual resides in this state for at least ten months out of every year;
  - c. The individual actively participates in the operation of the agricultural land;
  - d. The agricultural landholding does not exceed six hundred forty acres [258.99 hectares]; and
  - e. The agricultural landholding includes a dairy operation.
2. An individual who is permitted to acquire an interest in agricultural land under subsection 1 shall:
  - a. Notify the agriculture commissioner of any land acquisition within thirty days of the acquisition; and
  - b. Annually provide the agriculture commissioner with a list of all addresses at which the individual resided during the previous year and the dates during which the individual resided at each address.
3. If an individual ceases to meet the exceptions provided for in subsection 1, the individual shall dispose of the agricultural land within twenty-four months.
4. A partnership, limited partnership, limited liability company, trustee, or other business entity may not, directly or indirectly, acquire or otherwise obtain any interest, whether legal, beneficial, or otherwise, in any title to agricultural land unless the ultimate beneficial interest of the entity is held directly or indirectly by citizens of the United States or permanent resident aliens of the United States.
5. This section does not apply to agricultural land that may be acquired by devise, inheritance, as security for indebtedness, by process of law in the collection of debts, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise; provided, that all agricultural land acquired in the collection of debts or by the enforcement of a lien or claim must be disposed of within three years after acquiring ownership if the acquisition would otherwise violate this section.

6. This section does not apply to a foreign corporation or a foreign limited liability company which acquires agricultural land for use as an industrial site when construction contracts are entered into by the corporation or limited liability company within one hundred fifty days after acquisition of the land; provided, that this exception applies only to so much agricultural land as is reasonably necessary for industrial purposes. A foreign corporation or a foreign limited liability company which owns agricultural land for industrial purposes but which discontinues using the land for industrial purposes shall dispose of the land as provided by chapter 10-06.1. A foreign corporation or foreign limited liability company shall dispose of agricultural land acquired for industrial purposes within one year after acquisition if construction contracts are not entered into within one hundred fifty days after acquisition of the land.
7. This section does not apply to citizens or subjects of a foreign country whose rights to hold land are secured by treaty or to common carriers by railroad subject to the jurisdiction of the interstate commerce commission.
8. Notwithstanding subsection 4 and subsection 6, after June 30, 2023, a foreign government may not purchase, acquire, or hold any foreign governmental interest in agricultural land in the state. This section does not apply to any interest in agricultural land held by a foreign government before July 1, 2023.
9. Notwithstanding the provisions of this chapter, the prohibition on ownership of agricultural land does not apply to the acquisition of agricultural land or an interest in agricultural land by a state-controlled enterprise if the agricultural land:
  - a. Is used for agricultural research and development, or experimental purposes, including testing, developing, or producing crop production inputs, including seed, fertilizer, pesticides, soil amendments, plants, or biologicals; and
  - b. Does not exceed one hundred sixty acres [64.75 hectares].

Approved April 20, 2023

Filed April 21, 2023

## CHAPTER 407

### SENATE BILL NO. 2263

(Senators Meyer, Lee)  
(Representative Louser)

AN ACT to amend and reenact sections 47-10.2-01, 47-10.2-02, 47-10.2-03, and 47-10.2-05 of the North Dakota Century Code, relating to escrow accounts.

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

**SECTION 1. AMENDMENT.** Section 47-10.2-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **47-10.2-01. Definitions.**

In sections 47-10.2-01 through 47-10.2-03, unless the context or subject matter otherwise requires:

1. "Borrower" means the obligor under a residential mortgage held by a secondary mortgagee.
2. "~~Excess amount~~Servicer" means ~~any amount received in an escrow account during a calendar year in excess of three hundred dollars plus the amount necessary to pay real estate taxes, special assessments, and insurance premiums during that calendar year~~ a person or entity maintaining an escrow account for a residential mortgage.
3. "~~Secondary mortgagee~~" means ~~a successor mortgagee not residing or domiciled in this state who purchased the interest originally belonging to the mortgagee who originated a loan, under which an escrow is required to assure payment of obligations including property taxes, special assessments, and insurance premiums, if that loan is secured by a first lien real estate mortgage or equivalent security interest in a dwelling that the borrower uses as a principal place of residence in this state, not including a mobile home.~~
4. "~~Servicer~~Surplus amount" means ~~a person or entity maintaining an escrow account for a secondary residential mortgagee~~ from the annual escrow account analysis, any amount greater than or equal to fifty dollars, excluding any escrow cushion required by the servicer.

**SECTION 2. AMENDMENT.** Section 47-10.2-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **47-10.2-02. Notice of ~~excess~~surplus escrow payments.**

If an escrow account is maintained by the servicer of a secondary residential mortgage for a secondary mortgagee, and the account contains an ~~excess~~ surplus amount, the servicer shall provide written notice to the borrower, ~~on or before March first of the following year, of the escrow account status~~ within thirty calendar days following the end of the escrow account computation year. The information provided

to the borrower must include the balance in the escrow account after the annual payment of taxes and special assessments.

**SECTION 3. AMENDMENT.** Section 47-10.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**47-10.2-03. Application ~~Refunding~~ of excess ~~surplus~~ escrow payments.**

Upon receipt ~~creation~~ of the written notice under section 47-10.2-02, ~~the borrower may, within thirty days after the date of the notice, elect in a written request to the servicer one of the following options:~~

1. Refund of all or part of the excess amount; or
2. Retention of all or part of the excess amount in the escrow account.

~~If the borrower does not advise the servicer in writing within the time provided in this section, the servicer may continue maintenance of the escrow account in the same manner until the next report to the borrower under sections 47-10.2-01 through 47-10.2-03. If the borrower advises the servicer of an election within the time prescribed in sections 47-10.2-01 through 47-10.2-03, the servicer must comply with the borrower's election within thirty days of the election the servicer shall refund any surplus amount to the borrower within thirty calendar days following the end of the escrow account computation year. The notice required under section 47-10.2-02 must be included when surplus escrow funds are refunded under this section.~~

**SECTION 4. AMENDMENT.** Section 47-10.2-05 of the North Dakota Century Code is amended and reenacted as follows:

**47-10.2-05. Annual escrow account statement.**

Each residential mortgagee, including any insurance company with articles of incorporation filed under section 26.1-01-03 ~~or which is required to obtain a certificate of authority under section 26.1-01-05~~, intending to maintain an escrow account for the payment of taxes, assessments, insurance premiums, and other charges upon the mortgagor's residence shall furnish annually each mortgagor with a detailed statement showing all debits and credits to the account.

Approved April 12, 2023

Filed April 13, 2023

## CHAPTER 408

### HOUSE BILL NO. 1360

(Representative Klemin)  
(Senator Larson)

AN ACT to amend and reenact sections 47-30.2-24 and 47-30.2-39 of the North Dakota Century Code, relating to the revised uniform unclaimed property act.

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

**SECTION 1. AMENDMENT.** Section 47-30.2-24 of the North Dakota Century Code is amended and reenacted as follows:

#### **47-30.2-24. (404) Retention of records by holder.**

1. A holder required to file a report under section 47-30.2-21 shall retain records for ten years after the later of the date the report was filed or the last date a timely report was due to be filed, unless a shorter period is provided by rule of the commissioner.
2. Upon receipt of a notice for an examination under section 47-30.2-55, a holder shall retain, until the conclusion of the examination or any related appeal or litigation, all relevant records dating back ten years from the commencement of the examination, plus the applicable dormancy period under section 47-30.2-04, before the date of the administrator's delivery of a notice of an examination to a holder under this chapter.
3. The holder may satisfy the requirement to retain records under this section through an agent.
4. The records must contain:
  - 1-a. The verifiable information required to be included in the report;
  - 2-b. The date, place, and nature of the circumstances that gave rise to the property right;
  - 3-c. The amount or value of the property;
  - 4-d. The last address of the apparent owner, if known to the holder;
  - 5-e. If the holder sells, issues, or provides to others for sale or issue in this state traveler's checks, money orders, or similar instruments, other than third-party bank checks, on which the holder is directly liable, a record of the instruments while they remain outstanding indicating the state and date of issue; and
  - f. Records of items that were not reported as unclaimed sufficient to determine whether the holder has complied with this chapter.

**SECTION 2. AMENDMENT.** Section 47-30.2-39 of the North Dakota Century Code is amended and reenacted as follows:

**47-30.2-39. (610) Periods of limitation and repose.**

1. Expiration before, on, or after ~~the effective date of this chapter~~ July 1, 2021, of a period of limitation on an owner's right to receive or recover property, whether specified by contract, statute, or court order, does not prevent the property from being presumed abandoned or affect the duty of a holder under this chapter to file a report or pay or deliver property to the administrator.
2. The administrator may not commence an action or proceeding to enforce this chapter with respect to the reporting, payment, or delivery of property more than ~~five~~ seven years after the holder filed a nonfraudulent report under section 47-30.2-21 with the administrator. The parties may agree in a record to extend the limitation in this subsection.
3. The administrator may not commence an action, proceeding, or examination with respect to a duty of a holder under this chapter more than ten years after the duty arose.
4. The periods of limitation established by this section are tolled by the administrator's delivery of a notice that a holder is subject to an examination under section 47-30.2-55.

Approved April 7, 2023

Filed April 10, 2023

# PUBLIC BUILDINGS

## CHAPTER 409

### HOUSE BILL NO. 1288

(Representatives Roers Jones, Bahl, Ista, O'Brien, Swiontek)  
(Senators Cleary, Patten, J. Roers, Sickler)

AN ACT to create and enact a new subsection to section 48-01.2-20 and a new section to chapter 54-21 of the North Dakota Century Code, relating to notice requirements for construction manager at-risk contracts and state entities contracting for property management services; to amend and reenact section 54-21-24.1 of the North Dakota Century Code, relating to the lease of additional space by state agencies; and to provide for a legislative management study.

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

**SECTION 1.** A new subsection to section 48-01.2-20 of the North Dakota Century Code is created and enacted as follows:

The governing body shall publish a notice of request for qualifications to enter a construction management at-risk contract under this section in a newspaper of general circulation in the county in which the public improvement is located and in a construction trade publication, electronic service, builders exchange, or other industry-recognized method in general circulation among the contractors, building manufacturers, and dealers in this state. The notice must be published for three consecutive weeks, with the first publication being at least twenty-one days before the date of opening of the request for qualifications. Upon written request, the governing body shall mail a copy of the invitation to any interested party.

**SECTION 2. 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.**

A lease or rental agreement or renewal of the lease or rental agreement for the lease or rental of buildings or portions of buildings for use 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 subject to a determination of the legal sufficiency of the lease or rental agreement. To 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 individuals traveling to the offices, the director shall ~~promulgate~~adopt rules governing the lease or rental of additional buildings or portions of the buildings by 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. A lease or rental agreement entered under this section must include a list of all owners of the leased property, including each individual with an ownership interest in a business or businesses that directly or indirectly own the leased property if the individual's aggregate ownership interest in the leased property is ten percent or more.

**SECTION 3.** A new section to chapter 54-21 of the North Dakota Century Code is created and enacted as follows:

**Contract for services - Property management.**

A property management business that enters a contract to provide services to a state entity with an office located on state property or leased property used by a state entity under this chapter shall include a list of all the owners of the business providing the service, including each individual with an ownership interest in a business that directly or indirectly owns the business if the individual's aggregate ownership interest in the business is ten percent or more.

**SECTION 4. LEGISLATIVE MANAGEMENT STUDY - INFRASTRUCTURE DEVELOPMENT BY PRIVATE OPERATORS.** During the 2023-24 interim, the legislative management shall consider studying infrastructure development by private operators as provided for under chapter 48-02.1, agency construction management procurement procedures under section 48-01.2-19, and construction management at-risk delivery methods under section 48-01.2-20. The study must include input from contractor groups and other stakeholders to determine how public-private partnerships are being used and whether the use of these partnerships has been successful. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

Approved April 24, 2023

Filed April 24, 2023

# PUBLIC UTILITIES

## CHAPTER 410

### HOUSE BILL NO. 1067

(Energy and Natural Resources Committee)  
(At the request of the Public Service Commission)

AN ACT to amend and reenact subsection 7 of section 49-02-02 of the North Dakota Century Code, relating to powers of the commission.

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

**SECTION 1. AMENDMENT.** Subsection 7 of section 49-02-02 of the North Dakota Century Code is amended and reenacted as follows:

7. Cooperate with and receive technical and financial assistance from the United States, any state, or any department, agency, or officer thereof for any purposes relating to federal energy laws that deal with energy conservation, coal conversion, rate reform, and utilities subject to the jurisdiction of the commission. The commission shall also have the authority to file any reports, hold hearings, and promulgate regulations for any such purposes. Information received by the commission which was developed or obtained by ~~the market monitor of the midwest independent system operator, incorporated, or its successor, a regional transmission organization market monitor, the organization of midwest independent system operator states, and the southwest power pool regional state committee~~ is exempt from section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 411

### HOUSE BILL NO. 1063

(Energy and Natural Resources Committee)  
(At the request of the Public Service Commission)

AN ACT to amend and reenact section 49-05-05 of the North Dakota Century Code, relating to tariff rate filing fee requirement.

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

**SECTION 1. AMENDMENT.** Section 49-05-05 of the North Dakota Century Code is amended and reenacted as follows:

#### **49-05-05. Changes in tariff rates - Notice to commission - Filing fee.**

No ~~A~~ change ~~shall~~may not be made by any public utility in any tariffs, rates, joint rates, fares, tolls, schedules, classifications, or service which have been filed and published by any public utility, except after thirty days' notice to the commission. The notice ~~shall~~must state plainly the changes proposed ~~and except for services must be accompanied by a fifty dollar filing fee.~~ The commission, for a good cause shown, may allow changes upon less than the notice ~~herein~~ specified in this section, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 412

### HOUSE BILL NO. 1353

(Representatives Satrom, Karls, Klemin, Lefor, Monson)  
(Senator Conley)

AN ACT to amend and reenact section 49-05-17 of the North Dakota Century Code, relating to resource planning.

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

**SECTION 1. AMENDMENT.** Section 49-05-17 of the North Dakota Century Code is amended and reenacted as follows:

#### **49-05-17. Resource planning.**

1. An integrated resource plan must include:
  - a. The electric public utility's forecast of demand for electric generation supply over the planning period with recommended plans for meeting the forecasted demand plus an additional planning reserve margin for ensuring adequate and sufficient reliability of service; and
  - b. Any additional information the commission requests related to how an electric public utility intends to provide sufficient electric generation service for use by retail customers within the state over the planning period.
2. An electric public utility shall include a least cost plan for providing adequate and reliable service to retail customers which is consistent with the provisions of this title and the rules and orders adopted and issued by the commission.
3. The commission may consider the qualitative benefits and provide value to a base-load generation and load-following generation resource and its proximity to load.
4. The commission may contract or consult with an expert to evaluate qualitative benefits of resources and to review reliability planning. The commission may require an electric public utility to pay a fee necessary for completion of an evaluation in an amount not to exceed two hundred fifty thousand dollars.
  - a. If additional funds are necessary for completion of the evaluation, upon approval of the emergency commission, the electric public utility shall pay the additional fees reasonably necessary for the completion.
  - b. If the evaluation applies to more than one electric public utility, the commission may assess each electric public utility the proportionate share of the fee.
5. An electric public utility shall report annually to the commission on ~~cybersecurity preparedness, including an assessment of~~ emerging threats and efforts taken by the electric public utility to implement physical security and cybersecurity measures. The commission ~~may~~shall limit access to records

and portions of a meeting relating to physical security and cybersecurity preparedness.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 413

### HOUSE BILL NO. 1097

(Energy and Natural Resources Committee)  
(At the request of the Public Service Commission)

AN ACT to create and enact subsection 15 of section 49-22-03 and section 49-22-16.5, of the North Dakota Century Code, relating to the definition of utility-scale energy storage and route adjustments for electric transmission lines; to amend and reenact subsection 5 of section 49-22-03, subsection 4 of section 49-22-13, section 49-22-22, subsections 6 and 7 of section 49-22.1-01, subsection 4 of section 49-22.1-10, and subsection 4 of section 49-22.1-21 of the North Dakota Century Code, relating to the definition of electric energy conversion facility, the publication of notices of public hearings, payment of an administrative fee, adding hydrogen to definitions, the publication of a public hearing, and the payment of an administrative fee; and to declare an emergency.

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

<sup>218</sup> **SECTION 1. AMENDMENT.** Subsection 5 of section 49-22-03 of the North Dakota Century Code is amended and reenacted as follows:

5. "Electric energy conversion facility" means a plant, addition, or combination of plant and addition, designed for or capable of:
  - a. Generation by wind energy conversion exceeding one-half megawatt of electricity; ~~or~~
  - b. Generation by any means other than wind energy conversion exceeding fifty megawatts of electricity; or
  - c. Utility-scale energy storage.

<sup>219</sup> **SECTION 2.** Subsection 15 of section 49-22-03 of the North Dakota Century Code is created and enacted as follows:

15. "Utility-scale energy storage" means a plant, addition, or combination of plant and addition, designed for operation as a grid resource and capable of five megawatts or more of rated power capacity.

**SECTION 3. AMENDMENT.** Subsection 4 of section 49-22-13 of the North Dakota Century Code is amended and reenacted as follows:

4. Notice of a public hearing ~~shall~~must be given by the commission by service on such persons and agencies that the commission may deem appropriate and twice by publication, ~~once at least twenty days prior to such hearing and a~~

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<sup>218</sup> Section 49-22-03 was also amended by section 2 of House Bill No. 1097, chapter 413.

<sup>219</sup> Section 49-22-03 was also amended by section 1 of House Bill No. 1097, chapter 413.

~~second time within twenty days prior to such at a reasonable interval before the hearing. Notice of a public hearing and notice of opportunity for a public hearing on an application for a certificate, a permit, a transfer or amendment of a certificate or permit, or a waiver shall be given at the expense of the applicant. In an emergency the commission, in its discretion, may notice a hearing upon less than twenty days.~~

**SECTION 4.** Section 49-22-16.5 of the North Dakota Century Code is created and enacted as follows:

**49-22-16.5. Route adjustment before or during construction for an electric transmission line.**

1. Before or during construction, a utility, without any action by the commission, may adjust the route of an electric transmission line within the designated corridor if, before conducting any construction activities associated with the adjustment, the utility files with the commission certification and supporting documentation that:
  - a. The construction activities will be within the designated corridor;
  - b. The construction activities will not affect any known exclusion or avoidance areas within the designated corridor; and
  - c. The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route.
2. Before or during construction, a utility may adjust the route of an electric transmission line within the designated corridor which may affect an avoidance area if, before conducting any construction activities associated with the adjustment, the utility:
  - a. Files with the commission certification and supporting documentation that:
    - (1) The construction activities are within the designated corridor;
    - (2) The construction activities will not affect any known exclusion areas within the designated corridor;
    - (3) The construction activities are expected to impact an avoidance area with a specific description of the avoidance area expected to be impacted;
    - (4) Each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment, unless the utility previously received authorization from the commission for the impact to the avoidance area;
    - (5) For an impact for which the utility does not already have approval or has not filed the approval in paragraph 4, the utility has good cause and a specific reason to impact the avoidance area, and a reasonable alternative does not exist; and
    - (6) The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route.

- b. Receives the commission's written authorization that the utility may impact the avoidance area. If the commission does not authorize the impact to the avoidance area, the utility must obtain siting authority for the affected portion of the route adjustment. If the commission fails to act within ten working days of receipt of the utility's filing of the certification and supporting documentation under subdivision a of subsection 2, the route adjustment is deemed approved.
3. Before or during construction, a utility, without any action by the commission, may adjust the route of an electric transmission line outside the designated corridor if, before conducting any construction activities associated with the adjustment, the utility:
  - a. Files with the commission certification and supporting documentation that:
    - (1) The construction activities will not affect any known exclusion or avoidance areas;
    - (2) The route outside the corridor is no longer than one and one-half miles [2.41 kilometers];
    - (3) The utility will comply with the commission's orders, laws, and rules designating the corridor and designating the route; and
    - (4) Each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment.
  - b. Files detailed field studies indicating exclusion and avoidance areas for an area encompassing the route outside the designated corridor equal to the length of the adjustment of the proposed corridor.
4. Before or during construction, a utility may adjust the electric transmission line outside the designated corridor that may affect an avoidance area if, before conducting any construction activities associated with the adjustment, the utility:
  - a. Files with the commission certification and supporting documentation that:
    - (1) The construction activities will not affect any known exclusion areas;
    - (2) The construction activities are expected to impact an avoidance area with a specific description of the avoidance area expected to be impacted;
    - (3) The utility has good cause and a specific reason to impact the avoidance area, and a reasonable alternative does not exist;
    - (4) The route outside the corridor is no longer than one and one-half miles [2.41 kilometers];
    - (5) The utility will comply with the commission's orders, laws, and rules designating the corridor and designating the route; and

- (6) Each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment.
- b. Files detailed field studies indicating exclusion and avoidance areas for an area encompassing the route outside the designated corridor equal to the length of the adjustment of the proposed corridor.
- c. Receives the commission's written authorization that the utility may impact the avoidance area. If the commission does not authorize the impact to the avoidance area, the utility must obtain siting authority for the affected portion of the route adjustment. If the commission fails to act within ten working days of receipt of the utility's filing of the certification and supporting documentation under subdivisions a and b of subsection 4, the route adjustment is deemed approved.
5. The commission is not required to hold a public hearing or publish a notice of opportunity for a public hearing for any route adjustment under this section.

<sup>220</sup> **SECTION 5. AMENDMENT.** Section 49-22-22 of the North Dakota Century Code is amended and reenacted as follows:

**49-22-22. Siting process expense recovery - Deposit in special fund - Continuing appropriation.**

1. Every applicant under this chapter shall pay to the commission an application fee:
  - a. An applicant for a certificate of site compatibility shall pay an amount equal to five hundred dollars for each one million dollars of investment in the facility.
  - b. An applicant for a certificate of corridor compatibility shall pay an amount equal to five thousand dollars for each one million dollars of investment in the facility.
  - c. An applicant for a waiver shall pay the amount which would be required for an application for a certificate of site or corridor compatibility for the proposed facility. If a waiver is not granted for a proposed facility, such application fee paid shall be allowed as a credit against fees payable under this section in connection with an application under this chapter for a certificate or permit for the proposed facility.
  - d. An applicant requesting an amendment to a certificate or permit or for a transfer of a certificate or permit shall pay an amount to be determined by the commission to cover anticipated expenses of processing the application.
  - e. An applicant certifying to the commission under subsection 3 of section 49-22-03 shall pay an amount to be determined by the commission to cover anticipated expenses of processing the application.

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<sup>220</sup> Section 49-22-22 was also amended by section 6 of Senate Bill No. 2008, chapter 40.

- f. The application fee under subdivision a, b, or c may not be less than ten thousand dollars nor more than one hundred thousand dollars.
  - g. ~~If an application fee is less than twenty-five thousand dollars, an~~An applicant may agree to pay additional fees that are reasonably necessary for completion of the site, corridor, or route evaluation and designation process.
2. ~~At the request of the commission and~~If an applicant does not agree to pay additional fees reasonably necessary for completion of the site, corridor, or route evaluation and designation process, with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the electric energy conversion facility site, electric transmission facility corridor, or electric transmission facility route evaluation and designation process by the commission. The application fee under subsection 1 and any additional fees required of the applicant under this subsection may not exceed an amount equal to one thousand dollars for each one million dollars of investment in a proposed energy conversion facility or ten thousand dollars for each one million dollars of investment in a proposed electric transmission facility.
  3. A siting process expense recovery fund is established in the state treasury. The commission shall deposit payments received under subsections 1 and 2 in the siting process expense recovery fund. All moneys deposited in the fund are appropriated on a continuing basis to the commission to pay expenses incurred in the siting process. The commission shall specify the time and method of payment of any fees and shall refund the portion of fees collected under subsections 1 and 2 which exceeds the expenses incurred for the evaluation and designation process.
  4. Every applicant ~~for a certificate of site compatibility, certificate of corridor compatibility and route permit, and transfer of a certificate or permit~~ under this chapter shall pay to the commission an administrative fee equal to one hundred dollars for each one million dollars of original investment, not to exceed twenty-five thousand dollars. The administrative fee must be deposited in the public service commission program fund.

**SECTION 6. AMENDMENT.** Subsections 6 and 7 of section 49-22.1-01 of the North Dakota Century Code are amended and reenacted as follows:

6. "Gas or liquid energy conversion facility" means any plant, addition, or combination of plant and addition, designed for or capable of:
  - a. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic meters] or more of gas or hydrogen per day, regardless of the end use of the gas;
  - b. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or
  - c. Enrichment of uranium minerals.
7. "Gas or liquid transmission facility" means any of the following:

- a. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, hydrogen, or carbon dioxide. This subdivision does not apply to:
- (1) An oil or gas pipeline gathering system;
  - (2) A natural gas distribution system;
  - (3) Carbon dioxide storage facility underground equipment, including a flow line, subject to chapter 38-22;
  - (4) A pipeline with an outside diameter of four and one-half inches [11.43 centimeters] or less which will not be trenched and will be plowed in with a power mechanism having a vertical knife or horizontally directionally drilled, and its associated facilities; or
  - (5) 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.
- b. A liquid transmission line and associated facilities designed for or capable of transporting water from or to an energy conversion facility.

**SECTION 7. AMENDMENT.** Subsection 4 of section 49-22.1-10 of the North Dakota Century Code is amended and reenacted as follows:

4. Notice of a public hearing must be given by the commission by service on those persons the commission deems appropriate and twice by publication, ~~once at least twenty days before the hearing and a second time within twenty days~~ at a reasonable interval before the hearing. Notice of a public hearing and notice of opportunity for a public hearing on an application for a certificate, a permit, a transfer or amendment of a certificate or permit, or a waiver must be given at the expense of the applicant. ~~In an emergency the commission may notice a hearing upon less than twenty days.~~

<sup>221</sup> **SECTION 8. AMENDMENT.** Subsection 4 of section 49-22.1-21 of the North Dakota Century Code is amended and reenacted as follows:

4. Every applicant for a certificate of site compatibility, certificate of corridor compatibility and route permit, and transfer of a certificate or permit under this chapter shall pay to the commission an administrative fee equal to one hundred dollars for each one million dollars of original investment, not to exceed twenty-five thousand dollars. The administrative fee must be deposited into the public service commission program fund.

**SECTION 9. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 11, 2023

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<sup>221</sup> Section 49-22.1-21 was also amended by section 7 of Senate Bill No. 2008, chapter 40.

Filed April 12, 2023

## CHAPTER 414

### HOUSE BILL NO. 1315

(Representatives Novak, Dockter, S. Olson)  
(Senator Patten)

AN ACT to create and enact a new subsection to section 49-22-09 of the North Dakota Century Code, relating to factors to be considered when evaluating applications and designation for sites, corridors, and routes.

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

**SECTION 1.** A new subsection to section 49-22-09 of the North Dakota Century Code is created and enacted as follows:

Before the commencement of operations of the proposed facility, the applicant shall inform the commission that the applicant has executed or filed an unexecuted generation interconnection agreement, or comparable transmission services agreement, with the affected regional transmission organization or transmission owner.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 415

### HOUSE BILL NO. 1064

(Government and Veterans Affairs Committee)  
(At the request of the Public Service Commission)

AN ACT to amend and reenact subsection 7 of section 49-23-01 of the North Dakota Century Code, relating to the definition of excavation.

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

**SECTION 1. AMENDMENT.** Subsection 7 of section 49-23-01 of the North Dakota Century Code is amended and reenacted as follows:

7. "Excavation" means any operation in which earth, rock, or other materials in or below the ground is moved or otherwise displaced by means of hand or power tools, power equipment, or explosives and includes grading, trenching, digging, ditching, dredging, drilling, augering, tunneling, boring, scraping, and cable or pipe plowing and driving. The term does not include:
  - a. Opening a grave in a cemetery.
  - b. Plowing, cultivating, planting, harvesting, and similar operations in connection with agricultural activities, unless any of these activities disturbs the soil to a depth of eighteen inches [45.72 centimeters] or more.
  - c. Gardening and landscaping unless it disturbs the soil to a depth of twelve inches [30.48 centimeters] or more.
  - d. Normal maintenance of roads and streets if the maintenance does not change the original grade and does not involve the road ditch.
  - e. Normal repair and maintenance of track and track bed by a railroad on its own right of way.

Approved March 14, 2023

Filed March 15, 2023



# PUBLIC WELFARE

## CHAPTER 416

### HOUSE BILL NO. 1447

(Representatives Weisz, Lefor, Nelson, Stemen, Vigesaa)  
(Senators Bekkedahl, Lee)

AN ACT to create and enact a new chapter to title 50 of the North Dakota Century Code, relating to creation of the opioid settlement fund, creation of the opioid settlement advisory committee, and use of opioid settlement funds; to amend and reenact subsection 1 of section 21-10-06 and section 23-01-42 of the North Dakota Century Code and section 5 of chapter 3 of the 2021 Session Laws, relating to funds under management of the state investment board, opioid antagonist prescription, distribution, possession, or use, and the funding of the opioid treatment and prevention program; to provide an appropriation; to provide for a transfer; to provide for application; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 21-10-06 of the North Dakota Century Code is amended and reenacted as follows:

1. Subject to the provisions of section 21-10-02, the board shall invest the following funds:
  - a. State bonding fund.
  - b. Teachers' fund for retirement.
  - c. State fire and tornado fund.
  - d. Workforce safety and insurance fund.
  - e. Public employees retirement system.
  - f. Insurance regulatory trust fund.
  - g. State risk management fund.
  - h. Budget stabilization fund.
  - i. Water projects stabilization fund.
  - j. Health care trust fund.
  - k. Cultural endowment fund.
  - l. Petroleum tank release compensation fund.

- m. Legacy fund.
- n. Legacy earnings fund.
- o. Opioid settlement fund.
- p. A fund under contract with the board pursuant to subsection 3.

**SECTION 2. AMENDMENT.** Section 23-01-42 of the North Dakota Century Code is amended and reenacted as follows:

**23-01-42. Opioid antagonist prescription, distribution, possession, or use - Immunity from liability.**

1. As used in this section:
  - a. "Health care professional" means a licensed or certified health care professional who is working within the scope of practice for that profession. The term may include a physician, physician assistant, advanced practice registered nurse, and pharmacist acting in the professional's scope of practice.
  - b. "Opioid antagonist" means a drug:
    - (1) That is approved by the United States food and drug administration for the treatment of a drug overdose and is recognized by the department of health and human services for the treatment of a drug overdose; and
    - (2) That when administered negates or neutralizes, in whole or in part, the pharmacological effects of an opioid in the body.
2. A health care professional acting in good faith may directly or by standing order prescribe, distribute, or dispense an opioid antagonist, ~~if the health care professional provides training to:~~
  - a. ~~An individual at risk of experiencing an opioid-related overdose; or~~
  - b. ~~A family member, friend, or other individual in a position to assist an individual at risk of experiencing an opioid-related overdose.~~
3. ~~An individual acting in good faith may receive or possess an opioid antagonist if that individual is:~~
  - a. ~~An individual at risk of experiencing an opioid-related overdose; or~~
  - b. ~~A family member, friend, or other individual in a position to assist an individual at risk of experiencing an opioid-related overdose.~~
- 4.3. An individual acting in good faith may ~~self-administer an opioid antagonist or~~ administer an opioid antagonist to another individual who the administering individual suspects is at risk of experiencing an opioid overdose.
- 5.4. An individual may receive, possess, or administer an opioid antagonist under subsection 3 ~~or 4~~, regardless of whether the individual is the individual for or to whom the opioid antagonist is prescribed, distributed, or dispensed.

- 6-5. An individual who prescribes, distributes, dispenses, receives, possesses, or administers an opioid antagonist as authorized under this section is immune from civil and criminal liability for such action. A health care professional who prescribes, distributes, or dispenses an opioid antagonist as authorized under this section is not subject to professional discipline for such action. This section does not expand the scope of practice of a health care professional. Immunity from liability or discipline under this subsection does not apply if the individual's actions constitute recklessness, gross negligence, or intentional misconduct.

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

**Definitions.**

As used in this chapter:

1. "Committee" means the opioid settlement advisory committee.
2. "Department" means the department of health and human services.
3. "Fund" means the opioid settlement fund.
4. "Opioid litigation" means statewide opioid settlement agreements, judgments, or other recoveries in connection with a defendant's actual or alleged liability for contributing to the opioid crisis in this state which must be used for purposes of remediating or abating the opioid crisis in this state.

**Opioid settlement fund.**

There is created in the state treasury an opioid settlement fund. Moneys recovered by the state as a result of opioid litigation must be deposited in the fund. Moneys recovered by a political subdivision as a result of opioid litigation may be deposited in the fund. The state investment board shall invest moneys in the fund and income earned on the moneys in the fund must be credited to the fund. Moneys in the fund may be used in compliance with any court-ordered restrictions and as authorized by legislative appropriation and this chapter; however, legislative appropriations from the fund may not exceed eight million dollars in a biennium. The fund does not include funds not retained by the state pursuant to law or court order.

**Opioid settlement advisory committee.**

1. The committee is composed of:
  - a. One member of the North Dakota association of counties appointed by the chairman of the legislative management, who shall serve a term of two years.
  - b. One member of the North Dakota league of cities appointed by the chairman of the legislative management, who shall serve a term of two years.
  - c. One member of the North Dakota state association of city and county health officials appointed by the chairman of the legislative management, who shall serve a term of two years.

- d. One member who represents the highway patrol appointed by the highway patrol superintendent, who shall serve a term of two years.
  - e. The executive director of the department's division of behavioral health.
  - f. The managing director of the office of recovery reinvented.
  - g. One member appointed by the governor who shall serve as a nonvoting member and as the presiding officer of the committee, who shall serve a term of two years.
2. The committee shall forward recommendations to the department on spending decisions of the legislatively appropriated funds for remediation or abatement of the opioid crisis in this state.
    - a. The committee shall develop a process for receiving spending recommendation input from political subdivisions and the public.
    - b. The committee shall develop a process for making recommendations to the department under this subsection.
    - c. The committee shall consider cultural practices and alternative best practice treatment methods when considering and making recommendations to the department under this subsection.

#### **Department of health and human services - Report to budget section.**

1. The department shall develop a process for receiving and evaluating spending recommendations of the committee.
2. Annually, each political subdivision that recovers and retains moneys as a result of opioid litigation shall submit to the department a report detailing the decisions of the governing body of the political subdivision regarding use of the moneys.
3. Annually, the department shall make a report to the budget section of the legislative management on the status of the fund and of spending decisions made by the department and the political subdivisions under this chapter.

#### **Opioid remediation and abatement spending decisions - Implementation.**

1. The department's spending decisions of the legislatively appropriated funds from the fund for remediating and abating the opioid crisis must include at least twenty percent for opioid use prevention and overdose prevention, including best practices relating to fentanyl drug overdose, and approved use for workforce development.
2. The department shall implement or assist with the implementation of spending decisions made under this chapter.

#### **Political subdivisions - Public health units.**

1. A political subdivision that recovers moneys as a result of opioid litigation may deposit the moneys in the fund or may retain the moneys and transfer the moneys to the public health unit that provides services to that political subdivision.

2. A political subdivision that recovers and retains moneys as a result of opioid litigation shall collaborate with a public health unit on the use of the moneys for local programs for remediating and abating the opioid crisis. The use of moneys under this subsection must be in compliance with any court-ordered restrictions. The political subdivision and public health unit shall work together to ensure all reporting requirements are met.
3. All political subdivisions shall provide an allocation plan to the behavioral health division prior to expenditure.

**SECTION 4. AMENDMENT.** Section 5 of chapter 3 of the 2021 Session Laws is amended and reenacted as follows:

**SECTION 5. TRANSFER - LAWSUIT SETTLEMENT PROCEEDS - OPIOID SETTLEMENT FUND - OPIOID ADDICTION PREVENTION AND TREATMENT PROGRAM - APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES - ONE-TIME FUNDING - REPORT.** The office of management and budget shall transfer up to \$2,000,000 from opioid-related lawsuit settlement proceeds deposited in the attorney general refund fund to the ~~department of human services~~ opioid settlement fund which is appropriated to the department of health and human services for the purpose of defraying the expenses of an opioid addiction prevention and treatment program during the biennium beginning July 1, 2021, and ending June 30, 2023. The department of health and human services shall consult with the attorney general on the use of funding for the program. The attorney general shall notify the legislative council and office of management and budget of any lawsuit settlement proceeds that become available for transfer to the department of health and human services for this program. This funding is considered a one-time funding item.

**SECTION 5. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES - OPIOID REMEDIATION AND ABATEMENT.** There is appropriated out of any moneys in the opioid settlement fund in the state treasury, not otherwise appropriated, the sum of \$8,000,000, or so much of the sum as may be necessary, to the department of health and human services for the purpose of opioid remediation and abatement efforts under section 2 of this Act, for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 6. TRANSFER - OFFICE OF MANAGEMENT AND BUDGET - OPIOID SETTLEMENT FUND.** The office of management and budget shall transfer to the opioid settlement fund all funds received by the state and any political subdivision of the state from opioid settlements and litigation during the period beginning March 1, 2021, and the effective date of this Act, and any additional funds received during the period beginning on the effective date of this Act, and ending June 30, 2025.

**SECTION 7. APPLICATION.** To initiate staggered terms of the members of the opioid advisory committee, the initial appointments for the positions representing the North Dakota association of counties representative and the North Dakota state association of city and county health officials representative must be for one year.

**SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 29, 2023

Filed May 1, 2023

## CHAPTER 417

### HOUSE BILL NO. 1046

(Human Services Committee)

(At the request of the Department of Health and Human Services)

AN ACT to amend and reenact section 50-01.1-01, subsection 3 of section 50-01.1-02, and sections 50-01.1-03, 50-01.1-04, 50-01.1-06, 50-01.1-08, 50-35-01, 50-35-04, and 50-35-05 of the North Dakota Century Code, relating to direct and indirect costs, billing practices, and payments to human service zones, human service zones agreements and plans, creation of human service zones, human service zone directors, and the indirect cost plan.

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

**SECTION 1. AMENDMENT.** Section 50-01.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **50-01.1-01. Definitions.**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Department" means the department of health and human services.
2. "Direct costs" means costs that are charged directly to the human service zone human services fund. Direct costs are costs related directly to human service zone team members or human service zone services, including compensation, fringe benefits, and operating costs that are approved by the department and not identified by the department as an indirect cost.
3. "Host county" means the county within the human service zone in which the human service zone administrative office is located and in which the human service zone team members are employed.
4. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department.
5. "Human service zone director" means a human service zone team member who oversees the human service zone's operation and budget and serves as presiding officer of the human service zone board.
6. "Human service zone team member" means a county employee who is responsible for administering or delivering human services under the direction of the human service zone director.
7. "Human services" means:
  - a. A service or assistance provided to an individual or an individual's family in need of services or assistance, including child welfare services, locally administered economic assistance programs, medical service programs, and aging service programs, to assist the individual or the individual's

- family in achieving and maintaining basic self-sufficiency, including physical health, mental health, education, welfare, food and nutrition, and housing.
- b. A service or assistance provided, administered, or supervised by the department in accordance with chapter 50-06.
  - c. Licensing duties as administered or supervised by the department or delegated by the department to a human service zone.
8. "Indirect costs" means salaries, benefits, and operating costs incurred in providing those goods and services to support human services that are generally available for the common benefit of multiple county agencies which are not identified by the department as a direct cost. Indirect costs include legal representation; facilities and related costs, such as utilities and maintenance, remodeling, construction, and improvement costs; administrative support including payroll, accounting, banking, and coordination; information technology support and equipment; and miscellaneous goods and services, such as transportation, supplies, insurance coverage, phone, and mail services. Indirect costs may not include non-space and non-facility costs and expenses that are exclusively attributable to the human service zones.
9. "Locally administered economic assistance programs" means those primary economic assistance programs that need to be accessible to all citizens of the state through a human service zone office and include:
- a. Temporary assistance for needy families;
  - b. Employment and training programs;
  - c. Child care assistance programs;
  - d. Medical assistance, including early periodic screening, diagnosis, and treatment;
  - e. Supplemental nutrition assistance programs, including employment and training programs;
  - f. Refugee assistance programs;
  - g. Basic care services;
  - h. Energy assistance programs; and
  - i. Information and referral.

**SECTION 2. AMENDMENT.** Subsection 3 of section 50-01.1-02 of the North Dakota Century Code is amended and reenacted as follows:

3. Counties shall identify other counties with which to enter a human service zone agreement, and together the board of county commissioners shall file with the department a written agreement to create a human service zone ~~no later than December 1, 2019~~. The agreement must identify the proposed counties of the human service zone, host county, identify the human service zone board members, proposed effective date, and agree to seek approval

~~from the department regarding hiring or dismissal of county social services or human service zone employees. The department shall review and approve all agreements in accordance with section 50-01.1-03. The department may modify the agreements as specified in section 50-01.1-03 or if some of the counties are not included in a human service zone. If counties do not submit an agreement, the department shall create the human service zone. The board of county commissioners shall submit a plan as prescribed in section 50-01.1-04 by June 1, 2020. The department shall approve the plan in accordance with section 50-01.1-04 by January 1, 2024 within six months of receiving the plan. The board of county commissioners shall provide quarterly updates as requested by the department to the department after the agreement is approved until the plan is submitted as requested. If counties do not submit an agreement or plan or if the agreement or plan is rescinded or terminated by the constituent counties or by the department pursuant to section 50-01.1-02, 50-01.1-04, or 50-01.1-08, the department shall create the human service zone. The department shall establish the date the approved agreement or plan takes effect.~~

**SECTION 3. AMENDMENT.** Section 50-01.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-01.1-03. Manner of determination.**

1. In determining whether the creation of a human service zone should be approved or established, the department shall refer to, among other pertinent factors, the following:
  - a. Whether the affected county agencies are able to supply an adequate level and quality of human, social, and economic assistance services.
  - b. The number and qualifications of staff personnel serving the affected county agencies.
  - c. The ratio of the number of cases handled by the affected county agencies to the number of their staff personnel.
  - d. The geographical area and population served by the affected county agencies.
  - e. The distance of recipients from the affected county agencies.
  - f. The benefits that would be realized from the creation of the human service zone in terms of lower costs, increased availability of services, new services, and improvement of services.
  - g. The amount of current and future access points for individuals to apply for and receive services within a human service zone.
  - h. The existing pattern of the counties trade area and any regional pattern established by the department.
  - i. Whether the county has a population exceeding sixty thousand individuals according to the 2010 United States census to operate as a single human service zone and whether it is in the best interest of the neighboring counties.

- j. The maximum number of human service zones created may not exceed nineteen.
  - k. Whether the human service zone director can adequately supervise the activities and operations of the human service zone.
  - l. Whether the human service zone board is constituted of individuals that represent the population of the human service zone.
  - m. Budget impact.
  - n. Other good cause.
2. The department has final approval of a human service zone. The department may establish or modify a human service zone based on the criteria set forth in subsection 1. All human service zones must be initially approved or established by January 1, 2020, and may be rescinded or terminated pursuant to section 50-01.1-02, 50-01.1-04, or 50-01.1-08, modified thereafter by the department, or approved by the department through a process developed by the department and in accordance with section 50-01.1-02.

**SECTION 4. AMENDMENT.** Section 50-01.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-01.1-04. Plan - Financing - Human service zone board.**

1. A plan for the creation of a human service zone must describe the method of operation of the human service zone office, its administration, its location and the location of any ancillary offices, the disbursements from public funds, and the accountability for funds and manner of reporting receipts and disbursements. The plan must provide for the distribution of property owned by each of the county agencies affected by the consolidation and for the method of resolution of any disagreement between the boards of county commissioners involved in the human service zone or between the governing board and one or more boards of county commissioners. The plan must also require the participating counties to participate in the indirect cost allocation plan. The plan, once approved, may be continued for a definite term or until rescinded, terminated, or modified by the department or approved by the department through a process developed by the department and in accordance with section 50-01.1-02.
2. The human service zone director shall prepare a proposed budget for the human service zone at the time and in the manner as requested by the department and shall submit the department-approved proposed budget to the board of county commissioners of each county in the human service zone for review. The board of county commissioners may not take any action to amend or modify the amount approved by the department. The board of county commissioners may make recommendations to the human service zone director and the department to amend or modify the amount proposed or budgeted. The amount budgeted must be sufficient to defray the anticipated expenses of administration and the delivery of human services. Within ten days following review of the proposed budget by the boards of county commissioners, the human service zone director shall certify the budget to the respective county auditors of the counties in the district. Each board of county commissioners also shall budget and approve amounts sufficient to defray that county's anticipated indirect costs of the human service zone. Indirect

costs of the human service zone may not become direct costs without written approval of the department. Counties may not direct bill human service zones or the department as counties will receive reimbursement of costs through the indirect cost plan and any other expense incurred by the human service zone must be incurred through the human service zone's approved budget. The amounts budgeted, reviewed, and approved by the several boards of county commissioners or the department, or both must be periodically deposited with the treasurer of the host county in which the human service zone office is located and must be placed in a special human service zone human services fund. Indirect cost payments received by the human service zone are not required to be deposited in the special human service zone human services fund. The human service zone's income must be deposited into the human service zone human services fund by the treasurer of the host county. The human service zone board shall establish procedures for the review and approval of all claims against the human service zone human services fund. The human service zone director or designee shall approve or ratify all claims against the human service zone human services fund. The county treasurer of the host county, shall pay approved or ratified claims from the human service zone human services fund. Unexpended human service zone human services funds remaining at the end of a fiscal year may be carried over to the next fiscal year pursuant to section 50-35-05. The department may recalculate and adjust each human service zone's payment based on pertinent factors, which include actual expenditures over the prior or current payment period, current costs, offered services, need, income, performance of duties directed or assigned and supervised by the department, and caseload.

**222 SECTION 5. AMENDMENT.** Section 50-01.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**50-01.1-06. Human service zone directors.**

Human service zone directors:

1. ~~Must be employees of the human service zone and located within the human service zone, unless serving more than one human service zone.~~
2. Shall serve as the presiding officer of the human service zone board.
3. May serve one or more human service zones.
4. May hire, take disciplinary actions, and direct the work of a human service zone team member in accordance with the department's policies. The human service zone director has discretion to hire or separate from employment a human service zone team member, on behalf of the human service zone board, subject to the allotted number of approved and funded staff positions by the department.
5. Shall notify the department and appropriate host county staff, as directed by the county commissioners, regarding the hiring, dismissal, demotion, suspension without pay, forced relocation within the human service zone, reduction-in-force, or reprisal of a human service zone team member.

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<sup>222</sup> Section 50-01.1-06 was also amended by section 108 of House Bill No. 1165, chapter 229.

6. May notify county commissioners, the human service zone board, or other appropriate county staff regarding transfers of staff between the county and the department.
7. Shall establish, as agreed upon by the department, equitable compensation and salary increases for all human service zone team members within established appropriation.
8. Shall develop a budget for the human service zone in partnership with the department and other human service zone directors to ensure the administration of human services.
9. May serve as a designee of the department to supervise department employees assigned to or located within the human service zone.
10. Are the custodian designees of the executive director of the department for any child in the custody of the department.

**SECTION 6. AMENDMENT.** Section 50-01.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**50-01.1-08. Standards of administration - Action upon failure to administer.**

1. The department shall adopt standards for administration for human services and shall provide training for the implementation of those standards. Each human service zone shall provide for administration of human services that meet those standards.
2. The department shall develop a system of progressive discipline to address performance issues within the human service zone, including a grievance process. The system shall reserve the most serious actions for severe or chronic failure to meet the standards adopted under subsection 1.
3. The department shall provide ongoing performance notifications to the human service zone board and human service zone director related to the overall compliance with the standards of administration.
4. If a human service zone fails to provide for administration of human services that meet the standards adopted under subsection 1, the department may take any of the following actions:
  - a. Provide training to the persons responsible for administration.
  - b. Require the human service zone to prepare and implement a corrective action plan.
  - c. ~~Terminate~~Rescind, terminate, or modify a human service zone, agreement, or plan which may include requiring the reconstituting of the human service zone board or rehiring of a human service zone director as part of a new or modified agreement or plan.
  - d. Recalculate and adjust the human service zone's payments.
  - e. Recommend disciplinary action to the human service zone director or the human service zone board.

<sup>223</sup> **SECTION 7. AMENDMENT.** Section 50-35-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-35-01. Definitions.**

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

1. "Department" means the department of health and human services.
2. "Director" means the executive director of the department or the executive director's designee.
3. "Direct costs" means costs that are charged directly to the human service zone human services fund. Direct costs are costs related directly to human service zone team members or human service zone services, including compensation, fringe benefits, and operating costs that are approved by the department and not identified by the department as an indirect cost.
4. "Economic assistance" means those primary economic assistance programs that need to be accessible to all citizens of the state through a human service zone, including:
  - a. Temporary assistance for needy families;
  - b. Employment and training programs;
  - c. Child care assistance programs;
  - d. Medical assistance, including early periodic screening, diagnosis, and treatment;
  - e. Supplemental nutrition assistance programs, including employment and training programs;
  - f. Refugee assistance programs;
  - g. Basic care services;
  - h. Energy assistance programs; and
  - i. Information and referral.
5. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department.
6. "Human service zone director" means a human service zone team member who oversees the human service zone's operation and budget and serves as presiding officer of the human service zone board.
7. "Human services" means:

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<sup>223</sup> Section 50-35-01 was also amended by section 129 of House Bill No. 1165, chapter 229.

- a. A service or assistance provided to an individual or an individual's family in need of services or assistance, including child welfare services, economic assistance programs, medical service programs, and aging service programs, to assist the individual or the individual's family in achieving and maintaining basic self-sufficiency, including physical health, mental health, education, welfare, food and nutrition, and housing.
  - b. A service or assistance provided, administered, or supervised by the department in accordance with chapter 50-06.
  - c. Licensing duties as administered or supervised by the department or delegated by the department to a human service zone.
8. "Indirect costs" means salaries, benefits, and operating costs incurred in providing those goods and services to support human services that are generally available for the common benefit of multiple county agencies which are not identified by the department as a direct cost. Indirect costs include legal representation; facilities and related costs, such as utilities and maintenance; remodeling, construction, and improvement costs; administrative support, including payroll, accounting, banking, and coordination; information technology support and equipment; and miscellaneous goods and services, such as transportation, supplies, insurance coverage, phone, and mail services. Indirect costs may not include non-space and non-facility costs and expenses that are exclusively attributable to the human service zones.

**SECTION 8. AMENDMENT.** Section 50-35-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-35-04. Calculation of payment - Expenditures.**

1. The director shall calculate, in collaboration with the human service zone director or designee, the total payment for each human service zone. The calculation must be based on the human service zone's most recently available data on historical cost and income, and may include:
  - a. Other factors outlined in subsection 3;
  - b. The human service zone director's proposed budget for the human service zone which may include expansion of scope of human services to include kinship care services and payments and services in response to the federal Family First Prevention Services Act as part of the Bipartisan Budget Act of 2018 [Pub. L. 115-123];
  - c. Compensation equity and salary increases. The department may limit future salary increases for human service zone team members to the salary increase provided by the legislative assembly for state employees; and
  - d. Current and future duties of and services offered by the human service zone and department.
2. The director shall authorize expenditures from the human service finance fund to reimburse the department for the department's costs of providing human services that historically have been provided by a county, human service zone, or a new service or program based on federal or state law. The

department may authorize expenditures from the human service finance fund to reimburse the department for transitional costs incurred for implementing the statewide program for state funding.

3. The director may recalculate and adjust each human service zone's payment based on pertinent factors, which include actual expenditures over the previous or current payment period, current costs, offered services, need, income, performance of duties directed or assigned and supervised by the department, and caseload. If the director amends and modifies a human service zone's payment, the human service zone director must be notified within thirty days of amendment or modification. The spending authority of the human service zone must be increased or decreased based on the approved, adjusted, or modified payment.
4. ~~The director, during the period between January 1, 2021, and December 31, 2023, shall calculate payment for indirect costs. Indirect costs of the human service zone may not become direct costs without written approval of the department. The total payment by the department for reimbursement of indirect costs incurred to support human services may not be less than the prorated amount paid to counties for this purpose in state fiscal year 2018 as identified in the must be within legislative appropriation and be based on the annual indirect cost plan, unless a cost reduction or cost savings is achieved by the county starting August 1, 2023, for the counties to budget for the 2024 fiscal year. The 2023 cost allocation plan must be based on the requested information received from the counties.~~
5. Direct costs must be applied consistently within all human service zones and may not be included in indirect costs.
6. Indirect costs must be applied consistently within all counties as it relates to human service zones and may not be included in direct costs.
7. Counties shall provide the requested information for the cost allocation plan by September fifteenth of each year. The department shall provide notice to the county commissioners and auditors sixty days before the deadline if the county does not participate in providing information for the cost allocation plan. If counties fail to provide the requested information by September fifteenth of each year, the counties may not participate in the cost allocation plan and must be responsible for one hundred percent of all indirect costs.
8. The director may authorize expenditures from the human service finance fund to reimburse all indirect costs associated with a statewide pilot project, service, or program performed by a human service zone.

**SECTION 9. AMENDMENT.** Section 50-35-05 of the North Dakota Century Code is amended and reenacted as follows:

**50-35-05. Human service zone human services fund - Establishment - Fund balance limitations.**

1. Each human service zone in this state shall maintain a fund to be known as the human service zone human services fund. All expenditures, excluding indirect costs payments, by the human service zone for human services must be paid from the human service zone human services fund. If, due to unforeseen or other extenuating circumstances, a human service zone's distribution payment and balance of moneys carried over pursuant to

subsection 2 are not sufficient to meet the expenses of that human service zone, the director may approve a transfer from the human service finance fund to the human service zone human services fund.

2. The balance of moneys in the human service zone human services fund on January first of each year, after calendar year 2020, may not exceed five hundred thousand dollars for a human service zone that had annual expenditures of two million dollars or greater in calendar year 2020 or two hundred fifty thousand dollars for a human service zone that had annual expenditures of less than two million dollars in calendar year 2020. The balance of moneys carried over must be used for the administration of human services within that human service zone as approved by the human service zone director and may not be used for the county's cost allocation of indirect costs. The human service zone human services fund is not subject to any other charges and is exempt from section 21-02-08.

Approved March 30, 2023

Filed April 3, 2023

## CHAPTER 418

### SENATE BILL NO. 2276

(Senators Cleary, Dever, Lee)

AN ACT to create and enact a new section to chapter 50-06 and a new section to chapter 50-24.1 of the North Dakota Century Code, relating to the establishment of a cross-disability advisory council and a family caregiver service pilot project; 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.** A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

##### Cross-disability advisory council - Appointment - Duties.

1. The cross-disability advisory council shall participate with and provide feedback to the department regarding the implementation, planning, and design of the cross-disability children's waiver, level of care reform for the comprehensive developmental disabilities Medicaid home and community-based waiver, and a service option that will allow payment to a legally responsible individual who provides extraordinary care to an eligible individual through the Medicaid 1915(c) waivers. This subsection does not apply to the Medicaid 1915(c) home and community-based services aged and disabled waivers.
2. The department shall contract with a qualified, independent third party to facilitate and provide support services to the council. The contracted facilitator shall appoint the cross-disability advisory council members in accordance with subsection 3 and establish the length of member terms and the structure of the cross-disability advisory council. A representative from the contracted facilitator shall serve as the presiding officer of the advisory council.
3. The cross-disability advisory council consists of up to fifteen voting members. A majority of the members of the council must be family members of individuals with a disability, or must be individuals with a disability, who receive Medicaid home and community-based services. The remaining members of the council must be appointed based on their professional subject matter expertise in or knowledge of the needs and interests of individuals with disabilities. The council's membership must represent different regions of the state and a broad range of disabilities that pertain to the Medicaid home and community-based services. Upon request of the department, state agency representatives shall participate with the cross-disability advisory council in a nonvoting role.
4. The cross-disability advisory council shall meet at least quarterly and may appoint subcommittees to address specific topics or disabilities, which may include autism spectrum disorder, traumatic brain injury, and fetal alcohol spectrum disorder. A majority of the voting members of the council constitutes a quorum.

5. The cross-disability advisory council shall:
  - a. Discuss strategies to address gaps or needs regarding individuals with disabilities and Medicaid home and community-based services, including eligibility of legally responsible individuals;
  - b. Provide for the active participation of stakeholders, including consumers and providers; and
  - c. Receive information from the department and its consultants.
6. The cross-disability advisory council members, excluding the contracted facilitator, are entitled to reimbursement from the department for travel and lodging at the same rate as provided for state officers and employees.

**SECTION 2.** A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

**Family caregiver service pilot project - Report.**

1. The department shall establish the family caregiver service pilot project to assist in making payments to a legally responsible individual who provides extraordinary care to an eligible individual who is a participant in the Medicaid 1915(c) waivers, excluding the home and community-based services aged and disabled waiver.
2. The family caregiver service pilot project may include funding for extraordinary care, which means care:
  - a. Exceeding the range of activities a legally responsible individual would ordinarily perform in the household on behalf of an individual without extraordinary medical or behavioral needs; and
  - b. Is necessary to assure the health and welfare and avoid institutionalization of the individual in need of care.
3. The department may adopt rules addressing management of the family caregiver service pilot project and establish the eligibility requirements and exclusions for the family caregiver service pilot project. The department shall utilize an assessment of an eligible individual to determine the level of care authorized and to determine the best interests of the individual in need of care. The pilot project may not provide a payment for any care that is otherwise compensated through a Medicaid 1915(c) waiver or the Medicaid state plan.
4. A decision on an application which is issued by the department under this section may be appealed as provided under chapter 28-32. An individual may not appeal a denial, a revocation, a reduction in payment, or the termination of the family caregiver service pilot project administered by the department due to the unavailability of funding received for the purpose of issuing payments as part of the family caregiver service pilot project for the biennium.
5. The department shall provide the legislative management with periodic reports on the impact, usage, and costs associated with the family caregiver service pilot project.

**SECTION 3. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES - ONE-TIME FUNDING - FAMILY CAREGIVER SERVICE PILOT PROJECT - PROJECT COORDINATOR.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$2,500,000, or so much of the sum as may be necessary, to the department of health and human services for the purpose of establishing and issuing payments as part of a family caregiver service pilot project, for the biennium beginning July 1, 2023, and ending June 30, 2025. Of this amount, the sum of \$300,000, or so much of the sum as may be necessary, may be used by the department of health and human services for the purpose of hiring up to one full-time equivalent position to serve as the family caregiver service pilot project coordinator, who would be responsible for implementing the pilot project and for establishing a payment portal. Participation in this service pilot project is capped at 120 individuals. The department of health and human services is authorized one full-time equivalent position for this purpose.

**SECTION 4. EFFECTIVE DATE.** Section 2 of this Act becomes effective January 1, 2024.

**SECTION 5. EXPIRATION DATE.** Section 1 of this Act is effective through July 31, 2025, and after that date is ineffective; section 2 of this Act is effective until the date the commissioner of the department of health and human services certifies to the legislative council that an approximate or equivalent family caregiver services program is available through a Medicaid and Medicare-approved home and community-based services waiver.

Approved April 26, 2023

Filed April 27, 2023

## CHAPTER 419

### HOUSE BILL NO. 1480

(Representatives Boschee, Mitskog, Nelson, O'Brien, M. Ruby, Weisz)  
(Senators Burckhard, Cleary, Dever, Hogan, Lee, Mathern)

AN ACT to create and enact a new section to chapter 50-06 of the North Dakota Century Code, relating to a pay for success fund; to provide for a legislative management study; to provide for a legislative management report; to provide for a continuing appropriation; to provide for a transfer; and to provide an effective date.

#### 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:

#### **Pay for success fund - Continuing appropriation - Report to legislative management.**

1. There is created in the state treasury the pay for success fund. The fund consists of all transfers to the fund and fund earnings. Moneys in the fund are appropriated to the department of health and human services on a continuing basis for defraying the expenses associated with a pay for success program developed by the department. The department shall develop the program with outcomes focused on improving educational, social, or emotional achievement of at-risk children, improving the health of children, and increasing participation in the workforce by individuals who qualify for government assistance.
2. The pay for success program may include a performance-based grant, contract, or other agreement for initiatives to improve outcomes that result in increased public value and social benefits, including improved outcomes, cost-savings, increased public revenue, or minimal administrative requirements.
3. The pay for success program must include the following:
  - a. A provision that a bonus payment may be provided to the recipient of the grant, contract, or agreement to expand capacity for a proposed initiative;
  - b. A provision that a bonus payment may be provided to the recipient of the grant, contract, or agreement only after a twenty-percent cost reduction has been achieved;
  - c. A provision that a bonus payment may not exceed half of the cost reduction;
  - d. A formal evaluation to determine whether the program has met its proposed outcomes; and
  - e. An annual report to the legislative management on the progress of the program.

4. The requirements of chapter 54-44.4 do not apply to the selection of a grant recipient, the grant award, or payments made under this section.
5. All moneys designated for the fund from whatever source derived must be deposited by the state treasurer in the pay for success fund. The state treasurer shall invest moneys in the fund in interest-bearing accounts as is designated by the department of health and human services and the interest earned must be retained in the fund. The state treasurer shall apply the prudent investor rule in investing the moneys in the fund. The executive director of the department of health and human services or the director's designee shall administer the fund.

**SECTION 2. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - PAY FOR SUCCESS FUND.** During the biennium beginning July 1, 2023, and ending June 30, 2025, the office of management and budget shall transfer the sum of \$2,500,000 from the strategic investment and improvements fund to the pay for success fund. On July 1, 2027, the director of the office of management and budget shall transfer the unobligated balance in the pay for success fund to the strategic investment and improvements fund.

**SECTION 3. LEGISLATIVE MANAGEMENT STUDY - PAY FOR SUCCESS FUNDING MODEL.** During the 2023-24 interim, the legislative management shall consider studying the pay for success funding model as a tool to identify ways for state and local government to provide outcomes-based services. The study must review the ways the pay for success model may be implemented at the state and local level, examine pay for success programs of other states, and include input from the executive director of the department of health and human services and the state treasurer.

**SECTION 4. EFFECTIVE DATE.** Section 1 of this Act is effective January 1, 2024.

Approved April 29, 2023

Filed May 1, 2023

## CHAPTER 420

### HOUSE BILL NO. 1048

(Human Services Committee)

(At the request of the Department of Health and Human Services)

AN ACT to amend and reenact subsection 1 of section 50-06-01.4 of the North Dakota Century Code, relating to administration of programs for individuals with developmental disabilities by the department of health and human services.

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

<sup>224</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 50-06-01.4 of the North Dakota Century Code is amended and reenacted as follows:

1. The department includes the state hospital, the regional human service centers, a vocational rehabilitation unit, health division, and other units or offices and administrative and fiscal support services as the executive director determines necessary. The department must be structured to promote efficient and effective operations and, consistent with fulfilling its prescribed statutory duties, shall act as the official agency of the state in the discharge of the following functions not otherwise by law made the responsibility of another state agency:
  - a. Administration of programs for children and families, including adoption services and the licensure of child-placing agencies, foster care services and the licensure of foster care arrangements, certification of shelter care services, child protection services, children's trust fund, licensure of early childhood programs, refugee services, in-home community-based services, quality control, and administration of the interstate compacts on the placement of children and juveniles.
  - b. Administration of programs for individuals with developmental disabilities, including licensure of facilities and services, the establishment funding for family members and corporate guardianships, and the design and implementation of a community-based service system for persons in need of habilitation.
  - c. Administration of aging service programs, including nutrition, transportation, advocacy, social, ombudsman, recreation, and related services funded under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.], home and community-based services, licensure of adult foster care homes, and the committee on aging.
  - d. Administration of behavioral health programs, including:
    - (1) A policy division responsible for reviewing and identifying service needs and activities in the state's behavioral health system in an effort to ensure health and safety, access to services, and quality of

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<sup>224</sup> Section 50-06-01.4 was also amended by section 111 of House Bill No. 1165, chapter 229.

services; establishing quality assurance standards for the licensure of substance use disorder program services and facilities; and providing policy leadership in partnership with public and private entities; and

- (2) A service delivery division responsible for providing chronic disease management, regional intervention services, and twenty-four-hour crisis services for individuals with behavioral health disorders.
- e. Administration of economic assistance programs, including temporary assistance for needy families, the supplemental nutrition assistance program, home energy assistance, child care assistance, refugee assistance, work experience, work incentive, and quality control.
  - f. Administration of medical service programs, including medical assistance for children's health insurance program, Medicaid waivers, early and periodic screening, diagnosis and treatment, utilization control, autism services, and claims processing.
  - g. Administration of general assistance.
  - h. Administration of child support.
  - i. Administration of program, services, and licensing outlined in title 23 and other previous duties of the state department of health.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 421

### SENATE BILL NO. 2081

(Human Services Committee)

(At the request of the Department of Health and Human Services)

AN ACT to amend and reenact sections 23-41-04 and 50-06-05.1 of the North Dakota Century Code, relating to maternity hospitals, maternity homes, and medical hospitals; and to repeal chapter 50-19 of the North Dakota Century Code, relating to maternity homes.

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

**SECTION 1. AMENDMENT.** Section 23-41-04 of the North Dakota Century Code is amended and reenacted as follows:

**23-41-04. Birth report of child with special health care needs made to department.**

Within three days after the birth in this state of a child born with a visible congenital deformity, the ~~licensed maternity~~medical hospital ~~or home~~ in which the child was born, or the legally qualified physician or other person in attendance at the birth of the child outside of a ~~maternity~~medical hospital, shall furnish the department a report concerning the child with the information required by the department.

<sup>225</sup> **SECTION 2. AMENDMENT.** Section 50-06-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-05.1. Powers and duties of the department. (Effective through June 30, 2025)**

The department has the following powers and duties to be administered by the department through its state office or regional human service centers, human service zones, or otherwise as directed by the department:

1. To act as the official agency of the state in any social welfare or human service activity initiated by the federal government not otherwise by law made the responsibility of another state agency.
2. To administer, allocate, and distribute any state and federal funds that may be made available for the purpose of providing financial assistance, care, and services to eligible persons and families who do not have sufficient income or other resources to provide a reasonable subsistence compatible with decency and health.
3. To provide preventive, rehabilitative, and other human services to help families and individuals to retain or attain capability for independence or self-care.

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<sup>225</sup> Section 50-06-05.1 was also amended by section 1 of House Bill No. 1051, chapter 423, and section 1 of House Bill No. 1312, chapter 422.

4. To do needed research and study in the causes of social problems and to define appropriate and effective techniques in providing preventive and rehabilitative services.
5. To provide for the study, and to promote the well-being, of a child in need of protection, a child in need of services, and delinquent children.
6. To provide for the placing and supervision of children in need of substitute parental care, subject to the control of any court having jurisdiction and control of any such child.
7. To recommend appropriate human services related legislation to the legislative assembly.
8. To direct and supervise human service zone activities and administer a statewide program for state-funded human services, staffing, and administration costs related to the administration of human services.
9. To secure, hold, and administer for the purpose for which it is established any property and any funds donated to it either by will or deed, or otherwise, or through court order or otherwise available to the department, and to administer those funds or property in accordance with the instructions in the instrument creating them or in accordance with the instructions in the court order or otherwise.
10. To formulate standards and make appropriate inspections and investigations in accordance with such standards in connection with all licensing activities delegated by law to the department, including early childhood programs, nonmedical adult care facilities and ~~maternity homes~~, and persons or organizations receiving and placing children, and to require those facilities, persons, and organizations to submit reports and information as the department may determine necessary.
11. To permit the making of any surveys of human service needs and activities if determined to be necessary.
12. To issue subpoenas, administer oaths, and compel attendance of witnesses and production of documents or papers whenever necessary in making the investigations provided for herein or in the discharge of its other duties. A subpoena may not be issued to compel the production of documents or papers relating to any private child-caring or child-placing agency ~~or maternity hospital~~ or to compel the attendance as a witness of any officer or employee of those facilities except upon the order of a judge of the district court of the judicial district in which the facilities are located.
13. To provide insofar as staff resources permit appropriate human services, including social histories, social or social-psychological evaluations, individual, group, family, and marital counseling, and related consultation, when referred by self, parent, guardian, human service zone, court, physician, or other individual or agency, and when application is made by self (if an adult or emancipated youth), parent, guardian, or agency having custody; also, on the same basis, to provide human services to children and adults in relation to their placement in or return from the life skills and transition center, state hospital, or North Dakota youth correctional center.

14. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, treatment, probation, and aftercare services when requested by the judge of a juvenile court.
15. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, treatment, and probation and parole services, when requested by the judge in a criminal case.
16. To act as the official agency of the state in the administration of the supplemental nutrition assistance program and to direct and supervise human service zone administration of that program. The department with the consent of the legislative assembly or the budget section if the legislative assembly is not in session may terminate the program if the rate of federal financial participation in administrative costs provided under Public Law 93-347 is decreased or limited, or if the state or counties become financially responsible for all or a portion of the coupon bonus payments under the Food Stamp Act. Any request considered by the budget section must comply with section 54-35-02.9. The department may not deny assistance under the supplemental nutrition assistance program to any individual who has been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)].
17. To administer, allocate, and distribute any funds made available for the making of direct cash assistance payments, housing stabilization supports, and rental assistance and to promote cooperation and working agreements with public agencies and including the housing finance agency and department of commerce, and private human service agencies.
18. To act as the official agency of the state in the administration of the home energy assistance program; to direct and supervise human service zone administration of that program; and to take such actions, give such directions, and adopt such rules, subject to review in the courts of this state, as may be necessary or desirable to carry out this subsection. For purposes of the administration of the energy assistance program, funds are obligated at the earlier of the time a written commitment is made to pay a vendor or contractor for services or supplies delivered or to be delivered, or at the time payment is made to a vendor or contractor for services or supplies delivered or to be delivered. The provisions of this subsection concerning obligation of funds apply to payments and commitments made on or after July 1, 1991. The department with the consent of the legislative assembly or the budget section if the legislative assembly is not in session may terminate the program if the rate of federal financial participation in administrative costs is decreased or limited to less than fifty percent of total administrative costs, or if the state or counties become financially responsible for all or a portion of the cost of energy assistance program benefits. Any request considered by the budget section must comply with section 54-35-02.9
19. To administer, allocate, and distribute any funds made available for the payment of the cost of the special needs of any child under the age of twenty-one years, who is living in an adoptive home and would probably go without adoption except for acceptance by the adopted family, and whose adopted family does not have the economic ability and resources, as established by the department, to take care of the special needs of the child,

- including legal fees, maintenance costs, medical and dental expenses, travel costs, and other costs incidental to the care of the child.
20. To exercise and carry out any other powers and duties granted the department under state law.
  21. To administer, allocate, and distribute any funds made available for the payment of supervised independent living services, to develop standards regarding a supervised independent living program, to approve supervised independent living services for the purpose of providing foster care placement, and to apply for and administer federal and other funds that may be made available to undertake any of the activities described in this subsection.
  22. With the approval of the governor, to lease or transfer use of any part of the life skills and transition center facilities or properties, located in section thirteen, township one hundred fifty-seven north, range fifty-three west, located in Walsh County, North Dakota, to the federal government, or any public or private agency, organization, or business enterprise, or any worthy undertaking, under the following provisions:
    - a. The department determines that the facility or property is not needed to serve any present or reasonably foreseeable need of the life skills and transition center.
    - b. The transaction is exempt from the provisions of section 50-06-06.6.
    - c. The term of any lease may not exceed ninety-nine years.
    - d. All required legal documents, papers, and instruments in any transaction must be reviewed and approved as to form and legality by the attorney general.
    - e. Any funds realized by any transaction must be deposited in the state's general fund.
  23. To act as a decedent's successor for purposes of collecting amounts due to the department or human service zone, unless otherwise directed or determined by the department. Any affidavit submitted by the department under section 30.1-23-01 must conform to the requirements of that section except that the affidavit may state that twenty days have elapsed since the death of the decedent.
  24. To provide those services necessary for the department and for human service zones to comply with the provisions of any law, rule, order, or regulation of the United States or any federal agency or authority requiring civil service or merit standards or classifications as a condition for providing funds administered by the department.
  25. For purposes of administration of programs, and subject to legislative appropriation, funds are obligated at the time a written commitment is made to pay a vendor or contractor for services or supplies either delivered or to be delivered. This subsection applies to payments and commitments made on or after January 1, 1997.

26. To determine eligibility for medical assistance and children's health insurance program benefits when the department receives a joint application for these benefits.
27. To develop a system of services and supports to provide behavioral health services and supports in the community for children at risk of or identified as having a behavioral health condition and for the families of these children. This system must include early intervention, treatment, and recovery services and supports and must interface with, but not include, child protective services or juvenile court.
28. To provide resources on mental health awareness and suicide prevention to the behavioral health resource coordinator at each public school and to the designated individual at a nonpublic school. The resources must include information on identifying warning signs, risk factors, and the availability of resources in the community, and also must include an evidence-based, online virtual mental health and suicide prevention simulation-based training program that incorporates hands-on practice, contextual learning, and personalized feedback through interactive role-playing. The provisions of chapter 54-44.4 do not apply to the online virtual mental health and suicide prevention simulation-based training program under this subsection.
29. To administer, allocate, and distribute any funds made available for kinship care services and payments and services in response to the federal Family First Prevention Services Act as part of the Bipartisan Budget Act of 2018 [Pub. L. 115-123].
30. To contract with another human service zone or any other public or private person to discharge any of the department's duties or exercise any of the department's powers to administer human services.
31. To act on behalf of the department of public instruction to administer part B, section 619 of the Individuals with Disabilities Education Act [Pub. L. 108-446; 229 Stat. 2647; 20 U.S.C. 1411 et seq.].

**Powers and duties of the department. (Effective after June 30, 2025)** The department has the following powers and duties to be administered by the department through its state office or regional human service centers, human service zones, or otherwise as directed by the department:

1. To act as the official agency of the state in any social welfare or human service activity initiated by the federal government not otherwise by law made the responsibility of another state agency.
2. To administer, allocate, and distribute any state and federal funds that may be made available for the purpose of providing financial assistance, care, and services to eligible persons and families who do not have sufficient income or other resources to provide a reasonable subsistence compatible with decency and health.
3. To provide preventive, rehabilitative, and other human services to help families and individuals to retain or attain capability for independence or self-care.
4. To do needed research and study in the causes of social problems and to define appropriate and effective techniques in providing preventive and rehabilitative services.

5. To provide for the study, and to promote the well-being, of a child in need of protection, a child in need of services, and delinquent children.
6. To provide for the placing and supervision of children in need of substitute parental care, subject to the control of any court having jurisdiction and control of any such child.
7. To recommend appropriate human services related legislation to the legislative assembly.
8. To direct and supervise human service zone activities and administer a statewide program for state-funded human services, staffing, and administration costs related to the administration of human services.
9. To secure, hold, and administer for the purpose for which it is established any property and any funds donated to it either by will or deed, or otherwise, or through court order or otherwise available to the department, and to administer those funds or property in accordance with the instructions in the instrument creating them or in accordance with the instructions in the court order or otherwise.
10. To formulate standards and make appropriate inspections and investigations in accordance with such standards in connection with all licensing activities delegated by law to the department, including early childhood programs, nonmedical adult care facilities and ~~maternity homes~~, and persons or organizations receiving and placing children, and to require those facilities, persons, and organizations to submit reports and information as the department may determine necessary.
11. To permit the making of any surveys of human service needs and activities if determined to be necessary.
12. To issue subpoenas, administer oaths, and compel attendance of witnesses and production of documents or papers whenever necessary in making the investigations provided for herein or in the discharge of its other duties. A subpoena may not be issued to compel the production of documents or papers relating to any private child-caring or child-placing agency or ~~maternity hospital~~ or to compel the attendance as a witness of any officer or employee of those facilities except upon the order of a judge of the district court of the judicial district in which the facilities are located.
13. To provide insofar as staff resources permit appropriate human services, including social histories, social or social-psychological evaluations, individual, group, family, and marital counseling, and related consultation, when referred by self, parent, guardian, human service zone, court, physician, or other individual or agency, and when application is made by self (if an adult or emancipated youth), parent, guardian, or agency having custody; also, on the same basis, to provide human services to children and adults in relation to their placement in or return from the life skills and transition center, state hospital, or North Dakota youth correctional center.
14. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, treatment, probation, and aftercare services when requested by the judge of a juvenile court.

15. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, treatment, and probation and parole services, when requested by the judge in a criminal case.
16. To act as the official agency of the state in the administration of the supplemental nutrition assistance program and to direct and supervise human service zone administration of that program. The department with the consent of the legislative assembly or the budget section if the legislative assembly is not in session may terminate the program if the rate of federal financial participation in administrative costs provided under Public Law 93-347 is decreased or limited, or if the state or counties become financially responsible for all or a portion of the coupon bonus payments under the Food Stamp Act. Any request considered by the budget section must comply with section 54-35-02.9. The department may not deny assistance under the supplemental nutrition assistance program to any individual who has been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)].
17. To administer, allocate, and distribute any funds made available for the making of direct cash assistance payments, housing stabilization supports, and rental assistance and to promote cooperation and working agreements with public agencies and including the housing finance agency and department of commerce, and private human services agencies.
18. To act as the official agency of the state in the administration of the home energy assistance program; to direct and supervise human service zone administration of that program; and to take such actions, give such directions, and adopt such rules, subject to review in the courts of this state, as may be necessary or desirable to carry out this subsection. For purposes of the administration of the energy assistance program, funds are obligated at the earlier of the time a written commitment is made to pay a vendor or contractor for services or supplies delivered or to be delivered, or at the time payment is made to a vendor or contractor for services or supplies delivered or to be delivered. The provisions of this subsection concerning obligation of funds apply to payments and commitments made on or after July 1, 1991. The department with the consent of the legislative assembly or the budget section if the legislative assembly is not in session may terminate the program if the rate of federal financial participation in administrative costs is decreased or limited to less than fifty percent of total administrative costs, or if the state or counties become financially responsible for all or a portion of the cost of energy assistance program benefits. Any request considered by the budget section must comply with section 54-35-02.9
19. To administer, allocate, and distribute any funds made available for the payment of the cost of the special needs of any child under the age of twenty-one years, who is living in an adoptive home and would probably go without adoption except for acceptance by the adopted family, and whose adopted family does not have the economic ability and resources, as established by the department, to take care of the special needs of the child, including legal fees, maintenance costs, medical and dental expenses, travel costs, and other costs incidental to the care of the child.

20. To exercise and carry out any other powers and duties granted the department under state law.
21. To administer, allocate, and distribute any funds made available for the payment of supervised independent living services, to develop standards regarding a supervised independent living program, to approve supervised independent living services for the purpose of providing foster care placement, and to apply for and administer federal and other funds that may be made available to undertake any of the activities described in this subsection.
22. With the approval of the governor, to lease or transfer use of any part of the life skills and transition center facilities or properties, located in section thirteen, township one hundred fifty-seven north, range fifty-three west, located in Walsh County, North Dakota, to the federal government, or any public or private agency, organization, or business enterprise, or any worthy undertaking, under the following provisions:
  - a. The department determines that the facility or property is not needed to serve any present or reasonably foreseeable need of the life skills and transition center.
  - b. The transaction is exempt from the provisions of section 50-06-06.6.
  - c. The term of any lease may not exceed ninety-nine years.
  - d. All required legal documents, papers, and instruments in any transaction must be reviewed and approved as to form and legality by the attorney general.
  - e. Any funds realized by any transaction must be deposited in the state's general fund.
23. To act as a decedent's successor for purposes of collecting amounts due to the department or human service zone, unless otherwise directed or determined by the department. Any affidavit submitted by the department under section 30.1-23-01 must conform to the requirements of that section except that the affidavit may state that twenty days have elapsed since the death of the decedent.
24. To provide those services necessary for the department and for human service zones to comply with the provisions of any law, rule, order, or regulation of the United States or any federal agency or authority requiring civil service or merit standards or classifications as a condition for providing funds administered by the department.
25. For purposes of administration of programs, and subject to legislative appropriation, funds are obligated at the time a written commitment is made to pay a vendor or contractor for services or supplies either delivered or to be delivered. This subsection applies to payments and commitments made on or after January 1, 1997.
26. To determine eligibility for medical assistance and children's health insurance program benefits when the department receives a joint application for these benefits.

27. To develop a system of services and supports to provide behavioral health services and supports in the community for children at risk of or identified as having a behavioral health condition and for the families of these children. This system must include early intervention, treatment, and recovery services and supports and must interface with, but not include, child protective services or juvenile court.
28. To provide resources on mental health awareness and suicide prevention to the behavioral health resource coordinator at each school. The resources must include information on identifying warning signs, risk factors, and the availability of resources in the community.
29. To administer, allocate, and distribute any funds made available for kinship care services and payments and services in response to the federal Family First Prevention Services Act as part of the Bipartisan Budget Act of 2018 [Pub. L. 115-123].
30. To contract with another human service zone or any other public or private person to discharge any of the department's duties or exercise any of the department's powers to administer human services.
31. To act on behalf of the department of public instruction to administer part B, section 619 of the Individuals with Disabilities Education Act [Pub. L. 108-446; 229 Stat. 2647; 20 U.S.C. 1411 et seq.].

**SECTION 3. REPEAL.** Chapter 50-19 of the North Dakota Century Code is repealed.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 422

### HOUSE BILL NO. 1312

(Representative Schreiber-Beck)

AN ACT to amend and reenact section 50-06-05.1 of the North Dakota Century Code, relating to continuation of an evidence-based online virtual mental health and suicide prevention simulation-based training program for schools.

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

<sup>226</sup> **SECTION 1. AMENDMENT.** Section 50-06-05.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **50-06-05.1. Powers and duties of the department. (Effective through June 30, 20252027)**

The department has the following powers and duties to be administered by the department through its state office or regional human service centers, human service zones, or otherwise as directed by the department:

1. To act as the official agency of the state in any social welfare or human service activity initiated by the federal government not otherwise by law made the responsibility of another state agency.
2. To administer, allocate, and distribute any state and federal funds that may be made available for the purpose of providing financial assistance, care, and services to eligible persons and families who do not have sufficient income or other resources to provide a reasonable subsistence compatible with decency and health.
3. To provide preventive, rehabilitative, and other human services to help families and individuals to retain or attain capability for independence or self-care.
4. To do needed research and study in the causes of social problems and to define appropriate and effective techniques in providing preventive and rehabilitative services.
5. To provide for the study, and to promote the well-being, of a child in need of protection, a child in need of services, and delinquent children.
6. To provide for the placing and supervision of children in need of substitute parental care, subject to the control of any court having jurisdiction and control of any such child.
7. To recommend appropriate human services related legislation to the legislative assembly.

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<sup>226</sup> Section 50-06-05.1 was also amended by section 1 of House Bill No. 1051, chapter 423, and section 2 of Senate Bill No. 2081, chapter 421.

8. To direct and supervise human service zone activities and administer a statewide program for state-funded human services, staffing, and administration costs related to the administration of human services.
9. To secure, hold, and administer for the purpose for which it is established any property and any funds donated to it either by will or deed, or otherwise, or through court order or otherwise available to the department, and to administer those funds or property in accordance with the instructions in the instrument creating them or in accordance with the instructions in the court order or otherwise.
10. To formulate standards and make appropriate inspections and investigations in accordance with such standards in connection with all licensing activities delegated by law to the department, including early childhood programs, nonmedical adult care facilities and maternity homes, and persons or organizations receiving and placing children, and to require those facilities, persons, and organizations to submit reports and information as the department may determine necessary.
11. To permit the making of any surveys of human service needs and activities if determined to be necessary.
12. To issue subpoenas, administer oaths, and compel attendance of witnesses and production of documents or papers whenever necessary in making the investigations provided for herein or in the discharge of its other duties. A subpoena may not be issued to compel the production of documents or papers relating to any private child-caring or child-placing agency or maternity hospital or to compel the attendance as a witness of any officer or employee of those facilities except upon the order of a judge of the district court of the judicial district in which the facilities are located.
13. To provide insofar as staff resources permit appropriate human services, including social histories, social or social-psychological evaluations, individual, group, family, and marital counseling, and related consultation, when referred by self, parent, guardian, human service zone, court, physician, or other individual or agency, and when application is made by self (if an adult or emancipated youth), parent, guardian, or agency having custody; also, on the same basis, to provide human services to children and adults in relation to their placement in or return from the life skills and transition center, state hospital, or North Dakota youth correctional center.
14. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, treatment, probation, and aftercare services when requested by the judge of a juvenile court.
15. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, treatment, and probation and parole services, when requested by the judge in a criminal case.
16. To act as the official agency of the state in the administration of the supplemental nutrition assistance program and to direct and supervise human service zone administration of that program. The department with the consent of the legislative assembly or the budget section if the legislative assembly is not in session may terminate the program if the rate of federal financial

participation in administrative costs provided under Public Law 93-347 is decreased or limited, or if the state or counties become financially responsible for all or a portion of the coupon bonus payments under the Food Stamp Act. Any request considered by the budget section must comply with section 54-35-02.9. The department may not deny assistance under the supplemental nutrition assistance program to any individual who has been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)].

17. To administer, allocate, and distribute any funds made available for the making of direct cash assistance payments, housing stabilization supports, and rental assistance and to promote cooperation and working agreements with public agencies and including the housing finance agency and department of commerce, and private human service agencies.
18. To act as the official agency of the state in the administration of the home energy assistance program; to direct and supervise human service zone administration of that program; and to take such actions, give such directions, and adopt such rules, subject to review in the courts of this state, as may be necessary or desirable to carry out this subsection. For purposes of the administration of the energy assistance program, funds are obligated at the earlier of the time a written commitment is made to pay a vendor or contractor for services or supplies delivered or to be delivered, or at the time payment is made to a vendor or contractor for services or supplies delivered or to be delivered. The provisions of this subsection concerning obligation of funds apply to payments and commitments made on or after July 1, 1991. The department with the consent of the legislative assembly or the budget section if the legislative assembly is not in session may terminate the program if the rate of federal financial participation in administrative costs is decreased or limited to less than fifty percent of total administrative costs, or if the state or counties become financially responsible for all or a portion of the cost of energy assistance program benefits. Any request considered by the budget section must comply with section 54-35-02.9
19. To administer, allocate, and distribute any funds made available for the payment of the cost of the special needs of any child under the age of twenty-one years, who is living in an adoptive home and would probably go without adoption except for acceptance by the adopted family, and whose adopted family does not have the economic ability and resources, as established by the department, to take care of the special needs of the child, including legal fees, maintenance costs, medical and dental expenses, travel costs, and other costs incidental to the care of the child.
20. To exercise and carry out any other powers and duties granted the department under state law.
21. To administer, allocate, and distribute any funds made available for the payment of supervised independent living services, to develop standards regarding a supervised independent living program, to approve supervised independent living services for the purpose of providing foster care placement, and to apply for and administer federal and other funds that may be made available to undertake any of the activities described in this subsection.

22. With the approval of the governor, to lease or transfer use of any part of the life skills and transition center facilities or properties, located in section thirteen, township one hundred fifty-seven north, range fifty-three west, located in Walsh County, North Dakota, to the federal government, or any public or private agency, organization, or business enterprise, or any worthy undertaking, under the following provisions:
  - a. The department determines that the facility or property is not needed to serve any present or reasonably foreseeable need of the life skills and transition center.
  - b. The transaction is exempt from the provisions of section 50-06-06.6.
  - c. The term of any lease may not exceed ninety-nine years.
  - d. All required legal documents, papers, and instruments in any transaction must be reviewed and approved as to form and legality by the attorney general.
  - e. Any funds realized by any transaction must be deposited in the state's general fund.
23. To act as a decedent's successor for purposes of collecting amounts due to the department or human service zone, unless otherwise directed or determined by the department. Any affidavit submitted by the department under section 30.1-23-01 must conform to the requirements of that section except that the affidavit may state that twenty days have elapsed since the death of the decedent.
24. To provide those services necessary for the department and for human service zones to comply with the provisions of any law, rule, order, or regulation of the United States or any federal agency or authority requiring civil service or merit standards or classifications as a condition for providing funds administered by the department.
25. For purposes of administration of programs, and subject to legislative appropriation, funds are obligated at the time a written commitment is made to pay a vendor or contractor for services or supplies either delivered or to be delivered. This subsection applies to payments and commitments made on or after January 1, 1997.
26. To determine eligibility for medical assistance and children's health insurance program benefits when the department receives a joint application for these benefits.
27. To develop a system of services and supports to provide behavioral health services and supports in the community for children at risk of or identified as having a behavioral health condition and for the families of these children. This system must include early intervention, treatment, and recovery services and supports and must interface with, but not include, child protective services or juvenile court.
28. To provide resources on mental health awareness and suicide prevention to the behavioral health resource coordinator at each public school and to the designated individual at a nonpublic school. The resources must include

information on identifying warning signs, risk factors, and the availability of resources in the community, and also must include an evidence-based, online virtual mental health and suicide prevention simulation-based training program that incorporates hands-on practice, contextual learning, and personalized feedback through interactive role-playing. The provisions of chapter 54-44.4 do not apply to the online virtual mental health and suicide prevention simulation-based training program under this subsection.

29. To administer, allocate, and distribute any funds made available for kinship care services and payments and services in response to the federal Family First Prevention Services Act as part of the Bipartisan Budget Act of 2018 [Pub. L. 115-123].
30. To contract with another human service zone or any other public or private person to discharge any of the department's duties or exercise any of the department's powers to administer human services.
31. To act on behalf of the department of public instruction to administer part B, section 619 of the Individuals with Disabilities Education Act [Pub. L. 108-446; 229 Stat. 2647; 20 U.S.C. 1411 et seq.].

**Powers and duties of the department. (Effective after June 30, 20252027)**

The department has the following powers and duties to be administered by the department through its state office or regional human service centers, human service zones, or otherwise as directed by the department:

1. To act as the official agency of the state in any social welfare or human service activity initiated by the federal government not otherwise by law made the responsibility of another state agency.
2. To administer, allocate, and distribute any state and federal funds that may be made available for the purpose of providing financial assistance, care, and services to eligible persons and families who do not have sufficient income or other resources to provide a reasonable subsistence compatible with decency and health.
3. To provide preventive, rehabilitative, and other human services to help families and individuals to retain or attain capability for independence or self-care.
4. To do needed research and study in the causes of social problems and to define appropriate and effective techniques in providing preventive and rehabilitative services.
5. To provide for the study, and to promote the well-being, of a child in need of protection, a child in need of services, and delinquent children.
6. To provide for the placing and supervision of children in need of substitute parental care, subject to the control of any court having jurisdiction and control of any such child.
7. To recommend appropriate human services related legislation to the legislative assembly.
8. To direct and supervise human service zone activities and administer a statewide program for state-funded human services, staffing, and administration costs related to the administration of human services.

9. To secure, hold, and administer for the purpose for which it is established any property and any funds donated to it either by will or deed, or otherwise, or through court order or otherwise available to the department, and to administer those funds or property in accordance with the instructions in the instrument creating them or in accordance with the instructions in the court order or otherwise.
10. To formulate standards and make appropriate inspections and investigations in accordance with such standards in connection with all licensing activities delegated by law to the department, including early childhood programs, nonmedical adult care facilities and maternity homes, and persons or organizations receiving and placing children, and to require those facilities, persons, and organizations to submit reports and information as the department may determine necessary.
11. To permit the making of any surveys of human service needs and activities if determined to be necessary.
12. To issue subpoenas, administer oaths, and compel attendance of witnesses and production of documents or papers whenever necessary in making the investigations provided for herein or in the discharge of its other duties. A subpoena may not be issued to compel the production of documents or papers relating to any private child-caring or child-placing agency or maternity hospital or to compel the attendance as a witness of any officer or employee of those facilities except upon the order of a judge of the district court of the judicial district in which the facilities are located.
13. To provide insofar as staff resources permit appropriate human services, including social histories, social or social-psychological evaluations, individual, group, family, and marital counseling, and related consultation, when referred by self, parent, guardian, human service zone, court, physician, or other individual or agency, and when application is made by self (if an adult or emancipated youth), parent, guardian, or agency having custody; also, on the same basis, to provide human services to children and adults in relation to their placement in or return from the life skills and transition center, state hospital, or North Dakota youth correctional center.
14. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, treatment, probation, and aftercare services when requested by the judge of a juvenile court.
15. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, treatment, and probation and parole services, when requested by the judge in a criminal case.
16. To act as the official agency of the state in the administration of the supplemental nutrition assistance program and to direct and supervise human service zone administration of that program. The department with the consent of the legislative assembly or the budget section if the legislative assembly is not in session may terminate the program if the rate of federal financial participation in administrative costs provided under Public Law 93-347 is decreased or limited, or if the state or counties become financially responsible for all or a portion of the coupon bonus payments under the Food Stamp Act. Any request considered by the budget section must comply with section

54-35-02.9. The department may not deny assistance under the supplemental nutrition assistance program to any individual who has been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)].

17. To administer, allocate, and distribute any funds made available for the making of direct cash assistance payments, housing stabilization supports, and rental assistance and to promote cooperation and working agreements with public agencies and including the housing finance agency and department of commerce, and private human services agencies.
18. To act as the official agency of the state in the administration of the home energy assistance program; to direct and supervise human service zone administration of that program; and to take such actions, give such directions, and adopt such rules, subject to review in the courts of this state, as may be necessary or desirable to carry out this subsection. For purposes of the administration of the energy assistance program, funds are obligated at the earlier of the time a written commitment is made to pay a vendor or contractor for services or supplies delivered or to be delivered, or at the time payment is made to a vendor or contractor for services or supplies delivered or to be delivered. The provisions of this subsection concerning obligation of funds apply to payments and commitments made on or after July 1, 1991. The department with the consent of the legislative assembly or the budget section if the legislative assembly is not in session may terminate the program if the rate of federal financial participation in administrative costs is decreased or limited to less than fifty percent of total administrative costs, or if the state or counties become financially responsible for all or a portion of the cost of energy assistance program benefits. Any request considered by the budget section must comply with section 54-35-02.9
19. To administer, allocate, and distribute any funds made available for the payment of the cost of the special needs of any child under the age of twenty-one years, who is living in an adoptive home and would probably go without adoption except for acceptance by the adopted family, and whose adopted family does not have the economic ability and resources, as established by the department, to take care of the special needs of the child, including legal fees, maintenance costs, medical and dental expenses, travel costs, and other costs incidental to the care of the child.
20. To exercise and carry out any other powers and duties granted the department under state law.
21. To administer, allocate, and distribute any funds made available for the payment of supervised independent living services, to develop standards regarding a supervised independent living program, to approve supervised independent living services for the purpose of providing foster care placement, and to apply for and administer federal and other funds that may be made available to undertake any of the activities described in this subsection.
22. With the approval of the governor, to lease or transfer use of any part of the life skills and transition center facilities or properties, located in section thirteen, township one hundred fifty-seven north, range fifty-three west, located in Walsh County, North Dakota, to the federal government, or any

- public or private agency, organization, or business enterprise, or any worthy undertaking, under the following provisions:
- a. The department determines that the facility or property is not needed to serve any present or reasonably foreseeable need of the life skills and transition center.
  - b. The transaction is exempt from the provisions of section 50-06-06.6.
  - c. The term of any lease may not exceed ninety-nine years.
  - d. All required legal documents, papers, and instruments in any transaction must be reviewed and approved as to form and legality by the attorney general.
  - e. Any funds realized by any transaction must be deposited in the state's general fund.
23. To act as a decedent's successor for purposes of collecting amounts due to the department or human service zone, unless otherwise directed or determined by the department. Any affidavit submitted by the department under section 30.1-23-01 must conform to the requirements of that section except that the affidavit may state that twenty days have elapsed since the death of the decedent.
  24. To provide those services necessary for the department and for human service zones to comply with the provisions of any law, rule, order, or regulation of the United States or any federal agency or authority requiring civil service or merit standards or classifications as a condition for providing funds administered by the department.
  25. For purposes of administration of programs, and subject to legislative appropriation, funds are obligated at the time a written commitment is made to pay a vendor or contractor for services or supplies either delivered or to be delivered. This subsection applies to payments and commitments made on or after January 1, 1997.
  26. To determine eligibility for medical assistance and children's health insurance program benefits when the department receives a joint application for these benefits.
  27. To develop a system of services and supports to provide behavioral health services and supports in the community for children at risk of or identified as having a behavioral health condition and for the families of these children. This system must include early intervention, treatment, and recovery services and supports and must interface with, but not include, child protective services or juvenile court.
  28. To provide resources on mental health awareness and suicide prevention to the behavioral health resource coordinator at each school. The resources must include information on identifying warning signs, risk factors, and the availability of resources in the community.
  29. To administer, allocate, and distribute any funds made available for kinship care services and payments and services in response to the federal Family

First Prevention Services Act as part of the Bipartisan Budget Act of 2018 [Pub. L. 115-123].

30. To contract with another human service zone or any other public or private person to discharge any of the department's duties or exercise any of the department's powers to administer human services.
31. To act on behalf of the department of public instruction to administer part B, section 619 of the Individuals with Disabilities Education Act [Pub. L. 108-446; 229 Stat. 2647; 20 U.S.C. 1411 et seq.].

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 423

### HOUSE BILL NO. 1051

(Human Services Committee)

(At the request of the Department of Health and Human Services)

AN ACT to amend and reenact section 50-06-05.1 of the North Dakota Century Code, relating to the powers and duties of the department of health and human services.

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

<sup>227</sup> **SECTION 1. AMENDMENT.** Section 50-06-05.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **50-06-05.1. Powers and duties of the department. (Effective through June 30, 2025)**

The department has the following powers and duties to be administered by the department through its state office or regional human service centers, human service zones, or otherwise as directed by the department:

1. To act as the official agency of the state in any social welfare or human service activity initiated by the federal government not otherwise by law made the responsibility of another state agency.
2. To administer, allocate, and distribute any state and federal funds that may be made available for the purpose of providing financial assistance, care, and services to eligible persons and families who do not have sufficient income or other resources to provide a reasonable subsistence compatible with decency and health.
3. To provide preventive, rehabilitative, and other human services to help families and individuals to retain or attain capability for independence or self-care.
4. To do needed research and study in the causes of social problems and to define appropriate and effective techniques in providing preventive and rehabilitative services.
5. To provide for the study, and to promote the well-being, of a child in need of protection, a child in need of services, and delinquent children.
6. To provide for the placing and supervision of children in need of substitute parental care, subject to the control of any court having jurisdiction and control of any such child.
7. To recommend appropriate human services related legislation to the legislative assembly.

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<sup>227</sup> Section 50-06-05.1 was also amended by section 1 of House Bill No. 1312, chapter 422, and section 2 of Senate Bill No. 2081, chapter 421.

8. To direct and supervise human service zone activities and administer a statewide program for state-funded human services, staffing, and administration costs related to the administration of human services.
9. To secure, hold, and administer for the purpose for which it is established any property and any funds donated to it either by will or deed, or otherwise, or through court order or otherwise available to the department, and to administer those funds or property in accordance with the instructions in the instrument creating them or in accordance with the instructions in the court order or otherwise.
10. To formulate standards and make appropriate inspections and investigations in accordance with such standards in connection with all licensing activities delegated by law to the department, including early childhood programs, nonmedical adult care facilities and maternity homes, and persons or organizations receiving and placing children, and to require those facilities, persons, and organizations to submit reports and information as the department may determine necessary.
11. To permit the making of any surveys of human service needs and activities if determined to be necessary.
12. To issue subpoenas, administer oaths, and compel attendance of witnesses and production of documents or papers whenever necessary in making the investigations provided for herein or in the discharge of its other duties. A subpoena may not be issued to compel the production of documents or papers relating to any private child-caring or child-placing agency or maternity hospital or to compel the attendance as a witness of any officer or employee of those facilities except upon the order of a judge of the district court of the judicial district in which the facilities are located.
13. To provide insofar as staff resources permit appropriate human services, including social histories, social or social-psychological evaluations, individual, group, family, and marital counseling, and related consultation, when referred by self, parent, guardian, human service zone, court, physician, or other individual or agency, and when application is made by self (if an adult or emancipated youth), parent, guardian, or agency having custody; also, on the same basis, to provide human services to children and adults in relation to their placement in or return from the life skills and transition center, state hospital, or North Dakota youth correctional center.
14. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, treatment, ~~probation~~, and aftercare services when requested by the judge of a juvenile court.
15. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, and treatment, ~~and probation and parole services~~, when requested by the judge in a criminal case.
16. To act as the official agency of the state in the administration of the supplemental nutrition assistance program and to direct and supervise human service zone administration of that program. The department with the consent of the legislative assembly or the budget section if the legislative assembly is not in session may terminate the program if the rate of federal financial

participation in administrative costs provided under Public Law 93-347 is decreased or limited, or if the state or counties become financially responsible for all or a portion of the coupon bonus payments under the Food Stamp Act. Any request considered by the budget section must comply with section 54-35-02.9. The department may not deny assistance under the supplemental nutrition assistance program to any individual who has been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)].

17. To administer, allocate, and distribute any funds made available for the making of direct cash assistance payments, housing stabilization supports, and rental assistance and to promote cooperation and working agreements with public agencies and including the housing finance agency and department of commerce, and private human service agencies.
18. To act as the official agency of the state in the administration of the home energy assistance program; to direct and supervise human service zone administration of that program; and to take such actions, give such directions, and adopt such rules, subject to review in the courts of this state, as may be necessary or desirable to carry out this subsection. For purposes of the administration of the energy assistance program, funds are obligated at the earlier of the time a written commitment is made to pay a vendor or contractor for services or supplies delivered or to be delivered, or at the time payment is made to a vendor or contractor for services or supplies delivered or to be delivered. The provisions of this subsection concerning obligation of funds apply to payments and commitments made on or after July 1, 1991. The department with the consent of the legislative assembly or the budget section if the legislative assembly is not in session may terminate the program if the rate of federal financial participation in administrative costs is decreased or limited to less than fifty percent of total administrative costs, or if the state or counties become financially responsible for all or a portion of the cost of energy assistance program benefits. Any request considered by the budget section must comply with section 54-35-02.9
19. To administer, allocate, and distribute any funds made available for the payment of the cost of the special needs of any child under the age of twenty-one years, who is living in an adoptive home and would probably go without adoption except for acceptance by the adopted family, and whose adopted family does not have the economic ability and resources, as established by the department, to take care of the special needs of the child, including legal fees, maintenance costs, medical and dental expenses, travel costs, and other costs incidental to the care of the child.
20. To exercise and carry out any other powers and duties granted the department under state law.
21. To administer, allocate, and distribute any funds made available for the payment of supervised independent living services, to develop standards regarding a supervised independent living program, to approve supervised independent living services for the purpose of providing foster care placement, and to apply for and administer federal and other funds that may be made available to undertake any of the activities described in this subsection.

22. With the approval of the governor, to lease or transfer use of any part of the life skills and transition center facilities or properties, located in section thirteen, township one hundred fifty-seven north, range fifty-three west, located in Walsh County, North Dakota, to the federal government, or any public or private agency, organization, or business enterprise, or any worthy undertaking, under the following provisions:
  - a. The department determines that the facility or property is not needed to serve any present or reasonably foreseeable need of the life skills and transition center.
  - b. The transaction is exempt from the provisions of section 50-06-06.6.
  - c. The term of any lease may not exceed ninety-nine years.
  - d. All required legal documents, papers, and instruments in any transaction must be reviewed and approved as to form and legality by the attorney general.
  - e. Any funds realized by any transaction must be deposited in the state's general fund.
23. To act as a decedent's successor for purposes of collecting amounts due to the department or human service zone, unless otherwise directed or determined by the department. Any affidavit submitted by the department under section 30.1-23-01 must conform to the requirements of that section except that the affidavit may state that twenty days have elapsed since the death of the decedent.
24. To provide those services necessary for the department and for human service zones to comply with the provisions of any law, rule, order, or regulation of the United States or any federal agency or authority requiring civil service or merit standards or classifications as a condition for providing funds administered by the department.
25. For purposes of administration of programs, and subject to legislative appropriation, funds are obligated at the time a written commitment is made to pay a vendor or contractor for services or supplies either delivered or to be delivered. This subsection applies to payments and commitments made on or after January 1, 1997.
26. To determine eligibility for medical assistance and children's health insurance program benefits when the department receives a joint application for these benefits.
27. To develop a system of services and supports to provide behavioral health services and supports in the community for children at risk of or identified as having a behavioral health condition and for the families of these children. This system must include early intervention, treatment, and recovery services and supports and must interface with, but not include, child protective services or juvenile court.
28. To provide resources on mental health awareness and suicide prevention to the behavioral health resource coordinator at each public school and to the designated individual at a nonpublic school. The resources must include

information on identifying warning signs, risk factors, and the availability of resources in the community, and also must include an evidence-based, online virtual mental health and suicide prevention simulation-based training program that incorporates hands-on practice, contextual learning, and personalized feedback through interactive role-playing. The provisions of chapter 54-44.4 do not apply to the online virtual mental health and suicide prevention simulation-based training program under this subsection.

29. To administer, allocate, and distribute any funds made available for kinship care services and payments and services in response to the federal Family First Prevention Services Act as part of the Bipartisan Budget Act of 2018 [Pub. L. 115-123].
30. To contract with another human service zone or any other public or private person to discharge any of the department's duties or exercise any of the department's powers to administer human services.
31. To act on behalf of the department of public instruction to administer part B, section 619 of the Individuals with Disabilities Education Act [Pub. L. 108-446; 229 Stat. 2647; 20 U.S.C. 1411 et seq.].
32. In the event of a disruption of operations, to provide meals at a fair value or without a charge to employees of the department at the North Dakota state hospital, life skills and transition center, and regional human service centers, twenty-four hour staffed residential units as required by the job assignments of the employees.

**Powers and duties of the department. (Effective after June 30, 2025)** The department has the following powers and duties to be administered by the department through its state office or regional human service centers, human service zones, or otherwise as directed by the department:

1. To act as the official agency of the state in any social welfare or human service activity initiated by the federal government not otherwise by law made the responsibility of another state agency.
2. To administer, allocate, and distribute any state and federal funds that may be made available for the purpose of providing financial assistance, care, and services to eligible persons and families who do not have sufficient income or other resources to provide a reasonable subsistence compatible with decency and health.
3. To provide preventive, rehabilitative, and other human services to help families and individuals to retain or attain capability for independence or self-care.
4. To do needed research and study in the causes of social problems and to define appropriate and effective techniques in providing preventive and rehabilitative services.
5. To provide for the study, and to promote the well-being, of a child in need of protection, a child in need of services, and delinquent children.
6. To provide for the placing and supervision of children in need of substitute parental care, subject to the control of any court having jurisdiction and control of any such child.

7. To recommend appropriate human services related legislation to the legislative assembly.
8. To direct and supervise human service zone activities and administer a statewide program for state-funded human services, staffing, and administration costs related to the administration of human services.
9. To secure, hold, and administer for the purpose for which it is established any property and any funds donated to it either by will or deed, or otherwise, or through court order or otherwise available to the department, and to administer those funds or property in accordance with the instructions in the instrument creating them or in accordance with the instructions in the court order or otherwise.
10. To formulate standards and make appropriate inspections and investigations in accordance with such standards in connection with all licensing activities delegated by law to the department, including early childhood programs, nonmedical adult care facilities and maternity homes, and persons or organizations receiving and placing children, and to require those facilities, persons, and organizations to submit reports and information as the department may determine necessary.
11. To permit the making of any surveys of human service needs and activities if determined to be necessary.
12. To issue subpoenas, administer oaths, and compel attendance of witnesses and production of documents or papers whenever necessary in making the investigations provided for herein or in the discharge of its other duties. A subpoena may not be issued to compel the production of documents or papers relating to any private child-caring or child-placing agency or maternity hospital or to compel the attendance as a witness of any officer or employee of those facilities except upon the order of a judge of the district court of the judicial district in which the facilities are located.
13. To provide insofar as staff resources permit appropriate human services, including social histories, social or social-psychological evaluations, individual, group, family, and marital counseling, and related consultation, when referred by self, parent, guardian, human service zone, court, physician, or other individual or agency, and when application is made by self (if an adult or emancipated youth), parent, guardian, or agency having custody; also, on the same basis, to provide human services to children and adults in relation to their placement in or return from the life skills and transition center, state hospital, or North Dakota youth correctional center.
14. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, treatment, ~~probation~~, and aftercare services when requested by the judge of a juvenile court.
15. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, and treatment, ~~and probation and parole services~~, when requested by the judge in a criminal case.
16. To act as the official agency of the state in the administration of the supplemental nutrition assistance program and to direct and supervise human

service zone administration of that program. The department with the consent of the legislative assembly or the budget section if the legislative assembly is not in session may terminate the program if the rate of federal financial participation in administrative costs provided under Public Law 93-347 is decreased or limited, or if the state or counties become financially responsible for all or a portion of the coupon bonus payments under the Food Stamp Act. Any request considered by the budget section must comply with section 54-35-02.9. The department may not deny assistance under the supplemental nutrition assistance program to any individual who has been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)].

17. To administer, allocate, and distribute any funds made available for the making of direct cash assistance payments, housing stabilization supports, and rental assistance and to promote cooperation and working agreements with public agencies and including the housing finance agency and department of commerce, and private human services agencies.
18. To act as the official agency of the state in the administration of the home energy assistance program; to direct and supervise human service zone administration of that program; and to take such actions, give such directions, and adopt such rules, subject to review in the courts of this state, as may be necessary or desirable to carry out this subsection. For purposes of the administration of the energy assistance program, funds are obligated at the earlier of the time a written commitment is made to pay a vendor or contractor for services or supplies delivered or to be delivered, or at the time payment is made to a vendor or contractor for services or supplies delivered or to be delivered. The provisions of this subsection concerning obligation of funds apply to payments and commitments made on or after July 1, 1991. The department with the consent of the legislative assembly or the budget section if the legislative assembly is not in session may terminate the program if the rate of federal financial participation in administrative costs is decreased or limited to less than fifty percent of total administrative costs, or if the state or counties become financially responsible for all or a portion of the cost of energy assistance program benefits. Any request considered by the budget section must comply with section 54-35-02.9
19. To administer, allocate, and distribute any funds made available for the payment of the cost of the special needs of any child under the age of twenty-one years, who is living in an adoptive home and would probably go without adoption except for acceptance by the adopted family, and whose adopted family does not have the economic ability and resources, as established by the department, to take care of the special needs of the child, including legal fees, maintenance costs, medical and dental expenses, travel costs, and other costs incidental to the care of the child.
20. To exercise and carry out any other powers and duties granted the department under state law.
21. To administer, allocate, and distribute any funds made available for the payment of supervised independent living services, to develop standards regarding a supervised independent living program, to approve supervised independent living services for the purpose of providing foster care placement,

- and to apply for and administer federal and other funds that may be made available to undertake any of the activities described in this subsection.
22. With the approval of the governor, to lease or transfer use of any part of the life skills and transition center facilities or properties, located in section thirteen, township one hundred fifty-seven north, range fifty-three west, located in Walsh County, North Dakota, to the federal government, or any public or private agency, organization, or business enterprise, or any worthy undertaking, under the following provisions:
    - a. The department determines that the facility or property is not needed to serve any present or reasonably foreseeable need of the life skills and transition center.
    - b. The transaction is exempt from the provisions of section 50-06-06.6.
    - c. The term of any lease may not exceed ninety-nine years.
    - d. All required legal documents, papers, and instruments in any transaction must be reviewed and approved as to form and legality by the attorney general.
    - e. Any funds realized by any transaction must be deposited in the state's general fund.
  23. To act as a decedent's successor for purposes of collecting amounts due to the department or human service zone, unless otherwise directed or determined by the department. Any affidavit submitted by the department under section 30.1-23-01 must conform to the requirements of that section except that the affidavit may state that twenty days have elapsed since the death of the decedent.
  24. To provide those services necessary for the department and for human service zones to comply with the provisions of any law, rule, order, or regulation of the United States or any federal agency or authority requiring civil service or merit standards or classifications as a condition for providing funds administered by the department.
  25. For purposes of administration of programs, and subject to legislative appropriation, funds are obligated at the time a written commitment is made to pay a vendor or contractor for services or supplies either delivered or to be delivered. This subsection applies to payments and commitments made on or after January 1, 1997.
  26. To determine eligibility for medical assistance and children's health insurance program benefits when the department receives a joint application for these benefits.
  27. To develop a system of services and supports to provide behavioral health services and supports in the community for children at risk of or identified as having a behavioral health condition and for the families of these children. This system must include early intervention, treatment, and recovery services and supports and must interface with, but not include, child protective services or juvenile court.

28. To provide resources on mental health awareness and suicide prevention to the behavioral health resource coordinator at each school. The resources must include information on identifying warning signs, risk factors, and the availability of resources in the community.
29. To administer, allocate, and distribute any funds made available for kinship care services and payments and services in response to the federal Family First Prevention Services Act as part of the Bipartisan Budget Act of 2018 [Pub. L. 115-123].
30. To contract with another human service zone or any other public or private person to discharge any of the department's duties or exercise any of the department's powers to administer human services.
31. To act on behalf of the department of public instruction to administer part B, section 619 of the Individuals with Disabilities Education Act [Pub. L. 108-446; 229 Stat. 2647; 20 U.S.C. 1411 et seq.].
32. In the event of a disruption of operations, to provide meals at a fair value or without a charge to employees of the department at the North Dakota state hospital, life skills and transition center, and regional human service centers twenty-four hour staffed residential units as required by the job assignments of the employees.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 424

### SENATE BILL NO. 2079

(Human Services Committee)

(At the request of the Department of Health and Human Services)

AN ACT to amend and reenact section 50-06-06.3 of the North Dakota Century Code, relating to the department of health and human services maintaining a facility staff training system for the providers of community-based care on behalf of individuals with developmental disabilities.

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

**SECTION 1. AMENDMENT.** Section 50-06-06.3 of the North Dakota Century Code is amended and reenacted as follows:

##### **50-06-06.3. Facility staff training.**

It is the intent of the legislative assembly that the department ~~design and implement~~maintain a facility staff training system ~~in cooperation with the board of higher education~~ to assure adequate and appropriate staff development and training for the providers of community-based care on behalf of individuals with developmental disabilities.

Approved March 20, 2023

Filed March 21, 2023

## CHAPTER 425

### SENATE BILL NO. 2084

(Human Services Committee)

(At the request of the Department of Health and Human Services)

AN ACT to amend and reenact sections 50-06-06.11, 50-33-01, 50-33-06, and 50-33-08 of the North Dakota Century Code, relating to child care assistance payments to providers.

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

**SECTION 1. AMENDMENT.** Section 50-06-06.11 of the North Dakota Century Code is amended and reenacted as follows:

##### **50-06-06.11. Child care provider payments.**

Within the limits of federal regulations, the department, ~~at the election of the early childhood facility,~~ shall directly pay early childhood facilities monthly under child care assistance programs administered by the department.

**SECTION 2. AMENDMENT.** Section 50-33-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **50-33-01. 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. "Department" means the department of health and human services.
7. "Family child care" has the meaning provided in chapter 50-11.1.
8. "Group child care" has the meaning provided in chapter 50-11.1.
9. ~~"Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department~~has the meaning provided in section 50-35-01.
10. "In-home provider" has the meaning provided in section 50-11.1-02.
11. "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.
12. "Recipient" means an individual who is receiving child care assistance.
13. "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.
14. "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.

**SECTION 3. AMENDMENT.** Section 50-33-06 of the North Dakota Century Code is amended and reenacted as follows:

**50-33-06. 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~~through the age of twelve or three children under the age of two, including the provider's children under the age of twelve.

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.

**SECTION 4. AMENDMENT.** Section 50-33-08 of the North Dakota Century Code is amended and reenacted as follows:

**50-33-08. Limitations on in-home child care benefits.**

No benefits under this chapter may be provided ~~to~~ an in-home provider or for a child receiving 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 March 14, 2023

Filed March 15, 2023

## CHAPTER 426

### SENATE BILL NO. 2077

(State and Local Government Committee)  
(At the request of the Department of Health and Human Services)

AN ACT to amend and reenact section 50-06-21 of the North Dakota Century Code, relating to gambling disorder prevention, awareness, crisis intervention, rehabilitation, and treatment services.

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

**SECTION 1. AMENDMENT.** Section 50-06-21 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-21. Gambling disorder prevention, awareness, crisis intervention, rehabilitation, and treatment services.**

The department shall administer, develop, and implement a gambling disorder prevention, awareness, crisis intervention, rehabilitation, and treatment services program or contract with qualified treatment service providers for the development and implementation of a program for gambling prevention, awareness, crisis intervention, rehabilitation, financial counseling, and mental health treatment services. The program may provide outpatient services, partial care services, aftercare services, intervention services, financial counseling services, consultation services, or other forms of preventive, rehabilitative, or treatment services for individuals with a gambling disorder. An individual who provides treatment services must be a licensed professional operating within the individual's scope of practice. An individual who provides financial counseling services must be a certified consumer credit counselor with an accredited financial counseling agency. The department may establish a sliding payment scale for services under the program. The department may establish a centrally located repository of educational materials on identifying and treating gambling disorders. Any service fee collected by qualified treatment service providers for services provided under the contract must be applied toward the program's gambling disorder services. The term "qualified treatment service provider" means an entity based in North Dakota which is experienced in and capable of delivering gambling disorder education, prevention, awareness, crisis intervention, rehabilitation, financial counseling, and mental health treatment services as defined by the department of health and human services. The term "gambling disorder" means a chronic, progressive disease that is characterized by a preoccupation with gambling, loss of control over gambling behaviors, and oftentimes disregard for the negative consequences as a result of gambling. Gambling disorder includes gambling behavior that compromises, disrupts, or damages personal, family, or vocational pursuits.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 427

### SENATE BILL NO. 2129

(Senators Myrdal, Dever, Mathern)  
(Representatives McLeod, Meier, D. Ruby)

AN ACT to amend and reenact section 50-06-26 of the North Dakota Century Code, relating to the alternatives-to-abortion program; and to provide for an appropriation to the department of health and human services to establish and maintain the alternatives-to-abortion program.

#### 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 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.~~

1. As used in this section, "support services" includes medical services and post-abortion services.
2. The department shall establish and maintain an alternatives-to-abortion program that disburses funds to nongovernmental entities that provide services that promote childbirth instead of abortion by providing information, counseling, support services, and material assistance to pregnant women, women who believe they may be pregnant, and parents or other relatives caring for children twelve months of age or younger.
3. The department, in consultation with a nongovernmental entity that provides alternatives-to-abortion services, shall contract to inform the public about this program.
4. A religious organization receiving disbursements under the alternatives-to-abortion program may retain its independence from state and local governments, including the organization's control over the definition, development, practice, and expression of its religious beliefs.
5. The department may not require a religious organization to alter its form of internal governance, or remove religious art, icons, scripture, or other symbols

as a condition to receiving disbursements from the alternatives-to-abortion program.

6. If an individual receiving services under the alternatives-to-abortion program has an objection to the religious character of the entity providing alternatives-to-abortion services, the department shall, within a reasonable period of time after the date of the objection, make reasonable efforts to provide the individual with assistance of an equal value from an alternative provider accessible to the individual.
7. Except as otherwise provided by law, a religious organization may not discriminate against an individual in regard to providing alternatives-to-abortion services on the basis of religion, religious belief, or refusal to actively participate in religious practice.
8. If a religious organization segregates funds received from the alternatives-to-abortion program into a separate account, then only the account in which funds were deposited may be subject to an audit by the state.
9. Funds from the alternatives-to-abortion program may not be used for religious worship, instruction, or proselytization.

**SECTION 2. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES - ALTERNATIVES-TO-ABORTION PROGRAM.** 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 health and human services for the purpose of establishing and maintaining the alternatives-to-abortion program, for the biennium beginning July 1, 2023, and ending June 30, 2025.

Approved April 28, 2023

Filed April 29, 2023

## CHAPTER 428

### SENATE BILL NO. 2034

(Legislative Management)  
(Human Services Committee)

AN ACT to amend and reenact section 50-06-43.1 of the North Dakota Century Code, relating to the children's cabinet; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 50-06-43.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **50-06-43.1. Children's cabinet - Membership - Duties - Report.**

1. The children's cabinet is created to assess, guide, and coordinate the care for children across the state's branches of government and the tribal nations.
2. The children's cabinet consists of the following members:
  - a. The governor, or the governor's designee;
  - b. The chief justice of the supreme court, or the chief justice's designee;
  - c. ~~The speaker of the house of representatives, or the speaker's designee~~A member of the house of representatives from an even-numbered legislative district and a member of the house of representatives from an odd-numbered legislative district appointed by the majority leader of the house of representatives to serve two-year terms;
  - d. ~~The president pro tempore of the senate, or the president pro tempore's designee~~A member of the senate from an even-numbered legislative district and a member of the senate from an odd-numbered legislative district appointed by the majority leader of the senate to serve two-year terms;
  - e. The superintendent of public instruction, or the superintendent's designee;
  - f. The director of the committee on protection and advocacy, or the director's designee;
  - g. The commissioner of the department, or the commissioner's designee;
  - h. A representative of the tribal nations in the state, who is appointed by the governor; and
  - ~~h.i.~~ Four individuals representing parents, private service providers, or other community interests, who are appointed by the governor to serve a term of two years, at the pleasure of the governor, and who are entitled to reimbursement from the department for travel and lodging at the same rate as provided for state officers and employees.

3. ~~The chairman of legislative management, or a member of the legislative assembly appointed by the chairman of the legislative management shall appoint one of the legislative members to serve as the presiding officer of the cabinet. The children's cabinet shall select one of its members to serve as the vice-presiding officer.~~ The cabinet shall meet at least quarterly. Additional meetings may be held at the discretion of the presiding officer.
4. The children's cabinet shall:
  - a. Coordinate broad-based leadership across programs, agencies, branches of government, and tribal nations to meet the needs of children;
  - b. Develop strategies to address gaps or needs regarding early care and education, medical and behavioral health, community, child welfare, and juvenile justice;
  - c. Develop strategies to provide for the full continuum of care in the delivery of services, including promotion, prevention, early identification and intervention, service delivery, and recovery;
  - d. Seek to engage cooperation across public and private service providers;
  - e. Provide a comprehensive vision for how and where children are best served, attending to children in a respectful and relevant manner;
  - f. Seek strategies to provide services to children without consideration of prior engagement with juvenile services;
  - g. Provide for the active participation of consumers and providers statewide on advisory committees; ~~and~~
  - h. Receive information and recommendations from the department of health and human services, department of corrections and rehabilitation, and other state agencies; and
  - i. Provide an annual report to the legislative management and governor regarding the activities and findings of the cabinet.
5. The department shall provide the children's cabinet with staffing and administrative services.
6. A member of the cabinet who is not a state employee is entitled to reimbursement for mileage and expenses as provided by law for state officers and employees, to be paid by the department. A state employee who is a member of the cabinet is entitled to receive that employee's regular salary and is entitled to reimbursement for mileage and expenses to be paid by the employing agency. A member of the cabinet who is a member of the legislative assembly is entitled to receive per diem compensation at the rate provided under section 54-35-10 for each day performing official duties of the cabinet. The legislative council shall pay the per diem compensation and reimbursement for travel and expenses as provided by law for any member of the cabinet who is a member of the legislative assembly.

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

Filed April 13, 2023

## CHAPTER 429

### SENATE BILL NO. 2086

(Workforce Development Committee)

(At the request of the Department of Health and Human Services)

AN ACT to amend and reenact section 50-06-44 of the North Dakota Century Code, relating to evidence-based alcohol and drug education programs and program certification.

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

**SECTION 1. AMENDMENT.** Section 50-06-44 of the North Dakota Century Code is amended and reenacted as follows:

#### **50-06-44. Alcohol and drug education program - Rules - Fees.**

1. The department shall adopt rules for an evidence-based alcohol and drug education program for individuals ~~under the age of twenty-one~~ who violate section 5-01-08 or 39-08-01, or equivalent ordinances, or subparagraph a of paragraph 1 of subdivision d of subsection 7 of section 19-03.1-23. The rules must allow for the program provider to charge a fee to a participant in the program.
2. The department shall adopt rules for an evidence-based alcohol and drug education program certification.

Approved March 20, 2023

Filed March 21, 2023

## CHAPTER 430

### HOUSE BILL NO. 1418

(Representatives Dobervich, Dakane, Ista, Meier, Murphy, Nelson, Schneider)  
(Senators Dever, Hogan, Lee)

AN ACT to amend and reenact section 50-06.4-10 of the North Dakota Century Code, relating to the membership of the brain injury advisory council.

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

**SECTION 1. AMENDMENT.** Section 50-06.4-10 of the North Dakota Century Code is amended and reenacted as follows:

##### **50-06.4-10. Brain injury advisory council.**

1. The governor shall appoint at least ~~five~~eight, but no more than ~~nineteen~~, voting members to serve on the brain injury advisory council. The governor may make appointments under this subsection so a majority of the total voting members appointed under subsections 1 and 2 are brain injury survivors and family members of brain injury survivors. The members appointed by the governor must consist of the following:
  - a. At least ~~one~~two brain injury ~~survivors~~survivors, nominated by the council;
  - b. At least ~~one~~two family ~~member~~members of a brain injury survivor, nominated by the council;
  - c. At least one service provider who provides services to brain injury survivors, nominated by the council, who may be a brain injury survivor or a family member of a brain injury survivor;
  - d. An individual representing the Indian affairs commission, nominated by the Indian affairs commission, who may be a brain injury survivor or a family member of a brain injury survivor; and
  - e. At least one individual representing a religious, charitable, fraternal, civic, educational, legal, veteran, welfare, or professional group or organization, who may be a brain injury survivor or a family member of a brain injury survivor.
2. The speaker of the house of representatives shall appoint one member of the house of representatives and the president pro tempore of the senate shall appoint one member of the senate to serve as members of the council. Each legislative member of the council is entitled to receive compensation from the legislative council for each day spent in meetings of the council and for reimbursement for related travel and other necessary expenses in the amounts provided by law for other state officers.
3. Each of the following entities shall appoint a representative to serve as a nonvoting member of the council who serves at the pleasure of the appointing entity:

- a. Protection and advocacy project, one representative;
  - b. Department, one individual representing injury prevention and, one representative representing emergency medical services and trauma, one individual representing behavioral health, one individual representing Medicaid, one individual representing the adult and aging population, and one individual representing vocational rehabilitation; and
  - c. Department of public instruction, one representative.
4. The governor may appoint an individual representing stroke health and an individual representing a brain injury advocacy organization to serve as a nonvoting membermembers of the council who servesserve at the pleasure of the governor.
  5. A voting advisory council member appointed by the governor may not serve more than two consecutive four-year terms on the council.
  6. A council member appointed under subdivision a or b of subsection 1 is entitled to receive from the department reimbursement for expenses as provided by law for state officers and per diem compensation as determined by the department if the member is attending meetings or performing duties directed by the council.
  7. The council shall elect a chairman and vice chairman from the voting membership of the council and shall elect a secretary from the voting or nonvoting membership of the council. The council shall meet quarterly. A majority of the voting members of the council constitutes a quorum. The council shall adopt bylaws.
  8. The council shall advise the department and shall participate in activities to improve the quality of life for an individual with brain injury and the individual's family through brain injury awareness, prevention, research, education, collaboration, support services, and advocacy.
  9. The department shall contract with a private, nonprofit agency that does not provide brain injury services, to facilitate and provide support services to the council.

Approved April 21, 2023

Filed April 24, 2023

## CHAPTER 431

### SENATE BILL NO. 2181

(Senators K. Roers, Cleary, Mathern)  
(Representatives O'Brien, Rohr, M. Ruby)

AN ACT to amend and reenact sections 50-09-29, 50-24.1-02.6, and 50-24.1-41 of the North Dakota Century Code, relating to public assistance for pregnant women.

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

**SECTION 1. AMENDMENT.** Section 50-09-29 of the North Dakota Century Code is amended and reenacted as follows:

**50-09-29. Requirements for administration of temporary assistance for needy families.**

1. Except as provided in subsections 2, 3, and 4, the state agency, in its administration of the temporary assistance for needy families program, shall:
  - a. Provide assistance to otherwise eligible pregnant women ~~in the third trimester of a pregnancy~~;
  - b. Except as provided in subdivision c, afford eligible households benefits for no more than sixty months;
  - c. Exempt eligible households from the requirements of subdivision b due to mental or physical disability of a parent or child, mental or physical incapacity of a parent, or other hardship including a parent subject to domestic violence as defined in section 14-07.1-01;
  - d. Unless an exemption, exclusion, or disregard is required by law, count income and assets whenever actually available;
  - e. Except as provided in subdivision j, and as required to allow the state to receive funds from the federal government under title IV-A, provide no benefits to noncitizen immigrants who arrive in the United States after August 21, 1996;
  - f. Limit eligibility to households with total available assets, not otherwise exempted or excluded, of a value established by the state agency;
  - g. Exclude one motor vehicle of any value in determining eligibility;
  - h. Require work activities for all household members not specifically exempted by the state agency for reasons such as mental or physical disability of a parent or child or mental or physical incapacity of a parent;
  - i. Establish goals and take action to prevent and reduce the incidence of out-of-wedlock pregnancies and establish numerical goals for reducing the illegitimacy rate for the state for periods through calendar year 2005;

- j. To the extent required to allow the state to receive funds from the federal government under title IV-A, provide benefits to otherwise eligible noncitizens who are lawfully present in the United States;
- k. Establish and enforce standards against program fraud and abuse;
- l. Provide employment placement programs;
- m. Exempt from assets and income the savings and proportionate matching funds in individual development accounts;
- n. Determine the unemployment rate of adults living in a county that includes Indian reservation lands and a significant population of Indian individuals by using unemployment data provided by job service North Dakota;
- o. When appropriate, require household members to complete high school;
- p. To the extent required to allow the state to receive funds from the federal government under title IV-A, exempt single parents from required work activities;
- q. Provide for sanctions, including termination of assistance to the household, if a household member fails to cooperate with work requirements;
- r. Provide for sanctions, including termination of assistance to the household, if a household member fails, without good cause, to cooperate with child support activities;
- s. Deny assistance with respect to a minor child absent from the household for more than one calendar month, except as specifically provided by the state agency for absences;
- t. Require each household to participate in developing an individual employment plan and provide for sanctions, including termination of assistance to the household, if adult or minor household members age sixteen or older fail to cooperate with the terms of the individual employment plan;
- u. Provide pre-pregnancy family planning services that are to be incorporated into the temporary assistance for needy families program assessment;
- v. ~~Except in cases of pregnancy resulting from rape or incest, not increase the assistance amount to recognize the increase in household size when a child is born to a household member who was a recipient of assistance under this chapter during the probable month of the child's conception;~~
- w. Disregard earned income as an incentive allowance for no more than twelve months. Unless the individual has not received temporary assistance for needy families for twelve or more months, the incentive allowance may not be used again after the twelve months; and
- ~~x-w.~~ Consider, and if determined appropriate, authorize demonstration projects in defined areas which may provide benefits and services that are not identical to benefits and services provided elsewhere.

2. If the secretary of the United States department of health and human services determines that funds otherwise available for the temporary assistance for needy families program in this state must be reduced or eliminated should the state agency administer the program in accordance with any provision of subsection 1, the state agency shall administer the program in a manner that avoids the reduction or loss.
3. If the state agency determines, subject to the approval of the legislative management, that there is insufficient worker opportunity, due to increases in the unemployment rate, to participate in work activities, the state agency may administer the temporary assistance for needy families program in a manner different than provided in subsection 1.
4. If the state agency determines, subject to the approval of the legislative 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 human service zones under chapter 50-01, the state agency may administer the program in a manner that avoids that result.
5. The state agency may not deny assistance to any individual who has been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substance Act [21 U.S.C. 802(6)].

**SECTION 2. AMENDMENT.** Section 50-24.1-02.6 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-02.6. Medical assistance benefits - Eligibility criteria.**

1. The department shall provide medical assistance benefits to otherwise eligible persons who are medically needy persons who have countable income that does not exceed an amount determined under subsection 2.
2. The department shall establish an income level for medically needy persons at an amount no less than required by federal law.
3. The department shall provide medical assistance benefits to children and families coverage groups and pregnant women without consideration of assets.
4. The department shall provide medical assistance benefits to otherwise eligible pregnant women who are lawfully present in the United States.
5. The department may require, as a condition of eligibility, individuals eligible for Medicare part A, B, or D to apply for such coverage.

**SECTION 3. AMENDMENT.** Section 50-24.1-41 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-41. Medical assistance benefits - Pregnant women - Postpartum.**

The department shall seek the necessary approval from the centers for Medicare and Medicaid services to expand medical assistance coverage for pregnant women with income below one hundred ~~sixty-two~~~~seventy-five~~ percent of the federal poverty level. Services under this section must be for the duration of the pregnancy and the

postpartum period consisting of the twelve-month period beginning on the last day of the pregnancy.

Approved April 28, 2023

Filed April 29, 2023

## CHAPTER 432

### HOUSE BILL NO. 1049

(Human Services Committee)

(At the request of the Department of Health and Human Services)

AN ACT to create and enact a new section to chapter 50-11 of the North Dakota Century Code, relating to an agency foster home for adults zoning area.

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

**SECTION 1.** A new section to chapter 50-11 of the North Dakota Century Code is created and enacted as follows:

#### **Agency foster home for adults - Zoning.**

Notwithstanding the provisions in chapter 11-33, 40-47, or 58-03, or any other provisions authorizing a political subdivision to establish or enforce zoning regulations, an agency foster home for adults providing community support services or residential habilitation must be considered a permitted use in a single-family or equivalent least-density residential zone.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 433

### HOUSE BILL NO. 1091

(Human Services Committee)

(At the request of the Department of Health and Human Services)

AN ACT to amend and reenact sections 50-11-00.1, 50-11-01, 50-11-01.5, 50-11-01.6, 50-11-02, 50-11-02.1, 50-11-02.2, 50-11-03, 50-11-03.2, 50-11-03.3, 50-11-03.4, 50-11-03.5, 50-11-04, 50-11-04.2, 50-11-05, 50-11-06.7, 50-11-07, 50-11-08, and 50-11-09 of the North Dakota Century Code, relating to family foster care for children licenses, certifications, and approvals, and identified and kinship relatives; and to provide for a report to legislative management.

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

**SECTION 1. AMENDMENT.** Section 50-11-00.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **50-11-00.1. Definitions.**

As used in this chapter:

1. "Agency foster home for adults" means a residential home in which foster care for adults is regularly provided by professional staff trained to provide services to older adults or adults with a disability, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation.
2. "Approval" means the approval of tribal foster care facilities by the department, upon submission of tribal licensing standards or in the absence of tribal licensing standards compliance with state standards, of a facility located on or near, as identified by the tribe, a recognized Indian reservation in North Dakota, not subject to the jurisdiction of the state of North Dakota for licensing purposes, to allow the facility to receive title IV-E funding.
3. "Authorized agent" means the human service zone, unless another entity is designated by the department.
4. "Certified family foster home for children" means an occupied private residence in which foster care for children is regularly provided by the owner or lessee of the residence to no more than three children, unless the department approves otherwise.
5. "Department" means the department of health and human services.
- ~~5-6.~~ "Facility" means a foster home for adults, agency foster home for adults, family foster home for children, certified family foster home for children, supervised independent living program, or qualified residential treatment program for children.
- ~~6-7.~~ "Family foster home for children" means an occupied private residence in which foster care for children is regularly provided by the owner or lessee of

the residence to no more than six children, unless the department approves otherwise.

7-8. "Foster care for adults" means the provision of food, shelter, security and safety, guidance, and comfort on a twenty-four-hour per day basis, in the residential home of a caregiver or agency, to an individual age eighteen or older, who is unable, neglects, or refuses to provide for the individual's own care.

8-9. "Foster care for children" means the provision of substitute parental child care for those children who are in need of care for which the child's parent, guardian, or custodian is unable, neglects, or refuses to provide, and includes the provision of food, shelter, security and safety, guidance, and comfort on a twenty-four-hour basis, to one or more children under twenty-one years of age to safeguard the child's growth and development and to minimize and counteract hazards to the child's emotional health inherent in the separation from the child's family. Foster care may be provided in a licensed, certified, or approved family foster home for children, supervised independent living program, or qualified residential treatment program.

9-10. "Foster home for adults" means an occupied private residence in which foster care for adults is regularly provided by the owner or lessee of the residence, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation.

40-11. "Identified relative" or "kinship relative" means:

- a. The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt, uncle, great-uncle, nephew, niece, or first cousin;
- b. An individual with a relationship to the child, derived through a current or former spouse of the child's parent, similar to a relationship described in subdivision a;
- c. An individual recognized in the child's community as having a relationship with the child similar to a relationship described in subdivision a; or
- d. The child's stepparent.

44-12. "Qualified residential treatment program" means a licensed or approved residence providing an out-of-home treatment placement for children.

42-13. "Supervised independent living program" means a licensed or approved setting providing supervision and service delivery to youth transitioning into adulthood.

**SECTION 2. AMENDMENT.** Section 50-11-01 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-01. Foster care for children - License, certification, or approval required.**

1. A person may not furnish foster care for children for more than thirty days during a calendar year without first procuring a license, certification, or approval to do so from the department. The mandatory provisions of this

section requiring licensure, certification, or approval do not apply when the care is provided in:

- a. The home of an identified relative.
  - b. The home of a kinship relative.
  - c. A home or institution under the management and control of the state or a political subdivision.
  - e-d. A home or facility furnishing room and board primarily to accommodate the child's educational or career and technical education needs.
2. An individual providing care under subdivision a of subsection 1 shall submit to a criminal history record investigation as required under section 50-11-06.8.
  3. The family foster care for children license, certification, or approval is nontransferable and valid only for the applicants residing at a physical location noted at the time of issuance, unless otherwise approved by the department. Only one family foster home for children license, certification, or approval is permitted for each physical location.

**SECTION 3. AMENDMENT.** Section 50-11-01.5 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-01.5. Fire prevention training.**

Before initial licensure, or certification and each renewal under this chapter, each ~~foster parent~~family foster home for children shall complete a course of instruction related to fire prevention and safety. The state fire marshal shall design the course in cooperation with the department of health and human services. The course must be available ~~on videotape or any equivalent medium to the public~~ as designed by the department. The department of health and human services shall offer the course throughout the state.

**SECTION 4. AMENDMENT.** Section 50-11-01.6 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-01.6. Self-declaration form.**

The department of health and human services shall prescribe self-declaration forms to be completed and signed by each ~~foster parent~~family foster home for children provider before initial licensure or certification and each renewal under this chapter. The self-declaration forms must include references to smoke detectors, fire extinguishers, fire escape plans, and inspections of appliances, electrical systems, and heating systems.

**SECTION 5. AMENDMENT.** Section 50-11-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-02. License or certification granted - Term - Conditions.**

1. The department shall grant a license or certification for the operation of a facility receiving persons for foster care, for a period of not more than two years, to reputable and responsible persons upon showing that:

- a. The premises to be used are in fit sanitary condition and properly equipped to provide good care for all persons who may be received;
  - b. The persons in active charge of the facility are properly qualified to carry on efficiently the duties required of them;
  - c. The facility is likely to be conducted for the public good in accordance with sound social policy and with due regard to the health, morality, and well-being of all persons cared for in the facility;
  - d. The facility will be maintained according to the standards prescribed for its conduct by the rules of the department;
  - e. The applicant has not had a previous facility license, certification, or approval denied within two years of the date of the current application, unless waived by the department after the department considers the health and safety of children and the licensing, certification, or approval history of the applicant; and
  - f. The applicant has not had a previous facility license, certification, or approval revoked within five years of the date of the current application, unless waived by the department after the department considers the health and safety of children and the licensing, certification, or approval history of the applicant.
2. Before licensing, certifying, or approving a facility providing foster care for children or adults, the department shall seek a criminal history record when required by this chapter. The department shall consider any criminal history record information available at the time a licensing, license, certification, or approval decision is made.
  3. The department shall determine, in accordance with rules of the department, whether a license, certification, or approval may be issued to a facility that houses or employs any individual who has a criminal record.

**SECTION 6. AMENDMENT.** Section 50-11-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-02.1. Conviction not bar to licensure - Exceptions.**

Conviction of an offense does not disqualify a person from licensure, certification, or approval under this chapter unless the department determines that the offense has a direct bearing upon that person's ability to serve the public as the operator of a facility or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

**SECTION 7. AMENDMENT.** Section 50-11-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-02.2. Provisional license, certification, or approval.**

At the discretion of the department, a provisional license, certification, or approval may be issued to an applicant who, or whose facility, fails to conform in all respects to this chapter and the rules of the department. The department may set conditions under which a provisional license, certification, or approval may be issued, and may issue such a license, certification, or approval for any period of time, not to exceed

two years, as the department may deem reasonable or appropriate to the circumstances of the case. The department may not be compelled to issue a provisional license, certification, or approval.

**SECTION 8. AMENDMENT.** Section 50-11-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-03. Department to make rules - Records kept by facility.**

A record of all children and adults cared for in any facility licensed, certified, or approved under this chapter must be maintained at the facility in the manner and form prescribed by the department. The department shall establish reasonable minimum standards, and shall make such reasonable rules for the conduct of such place as are necessary to carry out the purposes of this chapter.

**SECTION 9. AMENDMENT.** Section 50-11-03.2 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-03.2. Use of public funds.**

1. Public funds for the purchase of foster care for children or adults may be used only in facilities licensed, certified, or approved by the department. No person acting on behalf of any state, county, or local governmental entity may arrange for or promote care provided in a facility that does not have a license, certification, or approval issued by the department. This section does not apply to any home or institution under the management and control of the state.
2. Nonfederal funds may be used to reimburse the costs of shelter care placements for no more than seven days if the shelter care services are certified by the department. If the entity has diligently pursued other placement, the department may grant an extension for the health and safety of the child or due to unforeseeable circumstances.
3. Nonfederal funds may be used for maintenance payments to unlicensed identified relatives or unlicensed kinship relatives for no more than six months.

**SECTION 10. AMENDMENT.** Section 50-11-03.3 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-03.3. Department to provide liability coverage to foster homes for children.**

1. The department shall provide liability coverage for acts or omissions of foster children placed in the care of ~~foster families~~ licensed, certified, or approved family foster homes for children. The department may provide this liability coverage through self-insurance.
2. The liability coverage under this section:
  - a. Must provide coverage for damage to property which is caused by the act of a foster child. This coverage must be for the lesser of the reasonable cost to repair or to replace the damaged property.
  - b. Is secondary to any other coverage.

- c. Except as provided in subdivision d, may not exceed five thousand dollars per claim, with an annual maximum of ten thousand dollars per year per claimant. The coverage under this subsection must include a deductible not to exceed one hundred dollars per claim.
  - d. In cases in which the property damage per event total exceeds twenty-five thousand dollars, the department may further review the claim. The department may cover twenty-five percent of the remaining property damage after any insurance reimbursement, not to exceed ten thousand dollars.
3. The department may provide for exclusions from liability coverage provided under this section.

**SECTION 11. AMENDMENT.** Section 50-11-03.4 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-03.4. Immunity for a person providing foster care.**

A person providing foster care for children in a licensed, certified, or approved facility is immune from civil liability for any act or omission resulting in damage or injury to or by a child in foster care if, at the time of the act or omission, the person providing foster care for children applied the reasonable and prudent parent standard in a manner that protects child safety, while also allowing the child in foster care to experience age or developmentally appropriate activities.

**SECTION 12. AMENDMENT.** Section 50-11-03.5 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-03.5. Automated clearinghouse payments.**

The department shall provide payment to family foster home for children, supervised independent living program, certified family foster home for children, and qualified residential treatment program for children providers using an automated clearinghouse to provide for electronic fund transfers. To receive payment, family foster home for children, supervised independent living program, certified family foster home for children, and qualified residential treatment program for children providers and applicants shall provide sufficient documentation to enable the department to provide electronic funds transfers through an automated clearinghouse. No other forms of payment are permitted, unless approved by the department.

**SECTION 13. AMENDMENT.** Section 50-11-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-04. Inspection by the department - Inspection and report by the department or its authorized agent.**

The department and its authorized agents at any time may inspect any facility licensed, certified, or approved under the provisions of this chapter or with respect to which a license, certification, or approval application has been made, except for approved family foster homes for children. The department and its authorized agents shall have full and free access to every part of the facility. The department may require, on a case-by-case basis, prior to or after licensure, certification, or approval, that a facility undergo a fire inspection, inspection of the heating system or the electrical system, or any other type of inspection that the department deems necessary to carry out the purposes of this chapter. All records of the facility must be open for the inspection of the department or its authorized agents and they may see

and interview all children and adults cared for therein. Upon the request of the department, the department or its authorized agent shall inspect any facility for which a license, certification, or approval is applied or issued, with the exception of approved family foster homes for children, and shall report the results of the inspection to the department.

**SECTION 14. AMENDMENT.** Section 50-11-04.2 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-04.2. Correction order - Contents.**

Whenever the department determines that the facility is not in compliance with this chapter, or the rules adopted thereunder, a notice of license, certification, or approval denial or revocation or a correction order must be issued to the facility, except for approved family foster home for children. A correction order must cite the statute or rule violated, state the factual basis of the violation, specify the time allowed for correction, and specify the amount of any fiscal sanction to be assessed if the correction order is not complied with in a timely fashion. A correction order may also state a suggested method of correction or require the submission of a corrective action plan by the facility. If a correction order requires the submission of a corrective action plan, it must also specify a date by which the corrective action plan must be submitted. The department shall, by rule, establish a schedule of allowable times for correction of deficiencies.

**SECTION 15. AMENDMENT.** Section 50-11-05 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-05. Contents of records not disclosed - Exception.**

The records of facilities licensed, certified, or approved under this chapter and the records of the department and its authorized agents, pertaining to the children or adults receiving care, are confidential but may be disclosed:

1. In a judicial proceeding;
2. To officers of the law or other legally constituted boards or agencies; or
3. To persons who have a definite interest in the well-being of the adults or children concerned, who are in a position to serve their interests, and who need to know the contents of the records in order to assure their well-being and interests.

**SECTION 16. AMENDMENT.** Section 50-11-06.7 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-06.7. License, approval, certification approval or denial - Time requirements.**

Except as otherwise provided in this section, an application to the department for a license, certification, or approval required by this chapter to provide foster care to adults or children must be approved or denied within sixty days of its receipt by the department. The department has an additional forty-five days to grant or deny a license, certification, or approval required by this chapter if the department notifies the applicant that the additional time is necessary.

**SECTION 17. AMENDMENT.** Section 50-11-07 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-07. Denial or revocation of license or certification.**

The department may deny or revoke the license or certification of any facility upon proper showing of any of the following:

1. Any of the conditions set forth in section 50-11-02 as prerequisites for the issuance of the license or certification do not exist.
2. The application contains false or misleading material information or the applicant intentionally withheld material information.
3. The license or certification was issued upon false, misleading, or intentionally withheld material information.
4. An operator, licensee, certification holder, caregiver, employee, or an agent of the facility has violated a provision of this chapter or any of the rules of the department.
5. An applicant, licensee, or certification holder providing family foster care for children has been involved in a court action in which a child in their household is currently removed from the home due to contrary to the welfare findings.
6. An operator, applicant, licensee, certification holder, caregiver, employee, or agent of the facility has been convicted of an offense determined by the department to have a direct bearing upon the person's ability to serve the public or residents of the facility, or the department determines, following conviction of any other offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

**SECTION 18. AMENDMENT.** Section 50-11-08 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-08. Denial or revocation of license or certification - Hearing - Appeals.**

Before any application for a license or certification under the provisions of this chapter is denied or before revocation of any such license or certification takes place, written charges as to the specific reasons therefor, a copy of the statutes and department rules authorizing such action, and notice of the applicant's or licensee's, or certification holder's right to a hearing on the matter before the department must be served upon the applicant or licensee, or certification holder. The applicant or licensee, or certification holder must also be notified in writing of the person's right to be represented at such hearing by counsel, to examine all files and documents in the custody of the department regarding the applicant or licensee, or certification holder, to present witnesses at the hearing on behalf of the applicant or licensee, or certification holder and to present documentary evidence, to present testimony and cross-examine adverse witnesses, and the right to an impartial hearing officer. The applicant or licensee, or certification holder has the right to a hearing before the department if the hearing is requested within twenty days after service of the written charges. The department shall hold the hearing within sixty days after the hearing request unless the applicant or licensee, or certification holder agrees to a later date. At any such hearing, the evidence submitted by the department in support of its denial or revocation of the applicant's or licensee's license, or certification holder's certificate must be limited to supporting only those reasons which were given by the department in its original notice of denial or revocation to the applicant or licensee, or certification holder. An applicant or licensee, or certification holder may appeal under

the provisions of chapter 28-32 any final decision of the department regarding the application for or issuance of a license or certification required by this chapter.

**SECTION 19. AMENDMENT.** Section 50-11-09 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-09. Appeal from decision of department denying or revoking license or certification.**

The applicant for a license or certification to operate a facility or a person whose license or certification for a facility has been revoked may appeal the denial or revocation to the district court. An appeal must be taken in the manner provided in chapter 28-32.

**SECTION 20. REPORT TO LEGISLATIVE MANAGEMENT - REINSTATEMENT OF PARENTAL RIGHTS.** During the 2023-24 interim, the department of health and human services, with assistance from other stakeholders, including the North Dakota supreme court, human service zone directors, and the North Dakota association of counties, shall review the option of reinstating parental rights that have been terminated by a court. Before August 1, 2024, the department shall report on the progress of the study to the legislative management.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 434

### SENATE BILL NO. 2182

(Senators Lee, Axtman, Larsen)  
(Representatives Pyle, M. Ruby, Schreiber-Beck)

AN ACT to amend and reenact section 50-11.1-02 of the North Dakota Century Code, relating to the definition of early childhood services.

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

<sup>228</sup> **SECTION 1. AMENDMENT.** Section 50-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **50-11.1-02. Definitions. (Effective through June 30, 2025)**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Authorized agent" means the human service zone, unless another entity is designated by the department.
2. "Child care center" means an early childhood program licensed to provide early childhood services to nineteen or more children.
3. "Department" means the department of health and human services.
4. "Drop-in care" means the care of children on a one-time, occasional, or unscheduled basis to meet the short-term needs of families.
5. "Early childhood program" means any program licensed under this chapter where early childhood services are provided for at least two hours a day for three or more days a week.
6. "Early childhood services" means the care, supervision, education, or guidance of a child or children, which is provided in exchange for money, goods, or other services. 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 section 15.1-06-06.1.
  - d. Child care, preschool, and prekindergarten services provided to children under six years of age in any educational facility through a program approved by the department.

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<sup>228</sup> Section 50-11.1-02 was also amended by section 29 of Senate Bill No. 2012, chapter 44, and section 1 of Senate Bill No. 2104, chapter 435.

- e. Child care provided in facilities operated in connection with a church, business, or organization where children are cared for during periods of time not exceeding four continuous hours while the child's parent is attending church services or is engaged in other activities, on 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 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. Head start and early head start programs that are federally funded and meet federal head start performance standards.
  - j. Child care provided in a medical facility by medical personnel to children who are ill.
  - k. A child care program certified by and in good standing with the United States department of defense family child care certification program, in accordance with department of defense instruction 6060.02, child development programs.
7. "Family child care" means a private residence licensed to provide early childhood services for no more than seven children at any one time, except that the term includes a residence licensed to provide early childhood services to two additional school-age children.
  8. "Four-year old program" means an approved child care program operated by a public or private educational entity or an early childhood program designed to serve four-year olds.
  9. "Group child care" means a child care program licensed to provide early childhood services for thirty or fewer 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. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department.
  12. "In-home provider" means any person who provides early childhood services to children in the children's home.
  13. "Licensed" means an early childhood program has the rights, authority, or permission granted by the department to operate and provide early childhood services.

14. "Multiple licensed program" means an early childhood program licensed to provide more than one type of early childhood services.
15. "Owner" or "operator" means the person who has legal responsibility for the early childhood program and premises.
16. "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.
17. "Premises" means the indoor and outdoor areas approved for providing early childhood services.
18. "Preschool" means a program licensed to offer early childhood services, which follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled and which serves no child for more than three hours per day.
19. "Public approval" means a nonlicensed early childhood program operated by a government entity that has self-certified that the program complies with this chapter.
20. "Registrant" means the holder of an in-home provider registration document issued by the department in accordance with this chapter.
21. "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.
22. "Registration document" 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.
23. "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.
24. "School-age children" means children served under this chapter who are at least five years but less than twelve years of age.
25. "Self-declaration" means voluntary documentation of an individual providing early childhood services in a private residence for up to five children through the age of eleven, of which no more than three may be under the age of twenty-four months.
26. "Staff member" means an individual:
  - a. Who is an employee of an early childhood program or of an early childhood services provider under a self-declaration;
  - b. Whose activities involve the care, supervision, or guidance of children of an early childhood program; or

- c. Who may have unsupervised access to children under the care, supervision, or guidance of an early childhood program or early childhood services provider under a self-declaration.

**Definitions. (Effective after June 30, 2025)**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Authorized agent" means the human service zone, unless another entity is designated by the department.
2. "Child care center" means an early childhood program licensed to provide early childhood services to nineteen or more children.
3. "Department" means the department of health and human services.
4. "Drop-in care" means the care of children on a one-time, occasional, or unscheduled basis to meet the short-term needs of families.
5. "Early childhood program" means any program licensed under this chapter where early childhood services are provided for at least two hours a day for three or more days a week.
6. "Early childhood services" means the care, supervision, education, or guidance of a child or children, which is provided in exchange for money, goods, or other services. 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 section 15.1-06-06.1.
  - d. Child care, preschool, and prekindergarten services provided to children under six years of age in any educational facility through a program approved by the department.
  - e. Child care provided in facilities operated in connection with a church, business, or organization where children are cared for during periods of time not exceeding four continuous hours while the child's parent is attending church services or is engaged in other activities, on 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 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. Head start and early head start programs that are federally funded and meet federal head start performance standards.
  - j. Child care provided in a medical facility by medical personnel to children who are ill.
  - k. A child care program certified by and in good standing with the United States department of defense family child care certification program, in accordance with department of defense instruction 6060.02, child development programs.
7. "Family child care" means a private residence licensed to provide early childhood services for no more than seven children at any one time, except that the term includes a residence licensed to provide early childhood services to two additional school-age children.
  8. "Group child care" means a child care program licensed to provide early childhood services for thirty or fewer children.
  9. "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.
  10. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department.
  11. "In-home provider" means any person who provides early childhood services to children in the children's home.
  12. "Licensed" means an early childhood program has the rights, authority, or permission granted by the department to operate and provide early childhood services.
  13. "Multiple licensed program" means an early childhood program licensed to provide more than one type of early childhood services.
  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" means a program licensed to offer early childhood services, which follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled and 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.

19. "Registrant" means the holder of an in-home provider registration document issued by the department in accordance with this chapter.
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.
21. "Registration document" 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. "School-age children" means children served under this chapter who are at least five years but less than twelve years of age.
24. "Self-declaration" means voluntary documentation of an individual providing early childhood services in a private residence for up to five children through the age of eleven, of which no more than three may be under the age of twenty-four months.
25. "Staff member" means an individual:
  - a. Who is an employee of an early childhood program or of an early childhood services provider under a self-declaration;
  - b. Whose activities involve the care, supervision, or guidance of children of an early childhood program; or
  - c. Who may have unsupervised access to children under the care, supervision, or guidance of an early childhood program or early childhood services provider under a self-declaration.

Approved April 6, 2023

Filed April 6, 2023

## CHAPTER 435

### SENATE BILL NO. 2104

(Human Services Committee)

(At the request of the Department of Health and Human Services)

AN ACT to amend and reenact sections 50-11.1-02, 50-11.1-02.1, 50-11.1-02.3, 50-11.1-03, 50-11.1-04, 50-11.1-06, 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, 50-11.1-09, 50-11.1-11.1, 50-11.1-12, 50-11.1-14, 50-11.1-14.1, 50-11.1-15, 50-11.1-16, 50-11.1-17, 50-11.1-18, 50-11.1-19, 50-11.1-22, 50-11.1-23, 50-11.1-24, and 50-11.1-26, and subsection 2 of section 50-25.1-11 of the North Dakota Century Code, relating to early childhood services, resource and referral services, workforce development, early childhood inclusion support program, best in class program, and disclosure of child abuse and neglect confirmed decisions involving early childhood services.

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

<sup>229</sup> **SECTION 1. AMENDMENT.** Section 50-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **50-11.1-02. Definitions. (Effective through June 30, 2025)**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "~~Authorized agent~~Applicant" means the ~~human service zone, unless another entity is designated by the department~~person applying for a license to operate early childhood services as an owner of an early childhood program, self-declaration, or registered in-home provider.
2. "Child care center" means an early childhood program licensed to provide early childhood services to nineteen or more children.
3. "Department" means the department of health and human services.
4. "Drop-in care" means the care of children on a one-time, occasional, or unscheduled basis to meet the short-term needs of families.
5. "Early childhood program" means any program licensed under this chapter where early childhood services are provided for at least two hours a day for three or more days a week.
6. "Early childhood services" means the care, supervision, education, or guidance of a child or children, which is provided in exchange for money, goods, or other services. Early childhood services does not include:
  - a. Substitute parental child care provided pursuant to chapter 50-11.

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<sup>229</sup> Section 50-11.1-02 was also amended by section 29 of Senate Bill No. 2012, chapter 44, and section 1 of Senate Bill No. 2182, chapter 434.

- 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 section 15.1-06-06.1.
  - d. Child care, preschool, and prekindergarten services provided to children under six years of age in any educational facility through a program approved by the department.
  - e. Child care provided in facilities operated in connection with a church, business, or organization where children are cared for during periods of time not exceeding four continuous hours while the child's parent is attending church services or is engaged in other activities, on 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 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. Head start and early head start programs that are federally funded and meet federal head start performance standards.
  - j. Child care provided in a medical facility by medical personnel to children who are ill.
7. "Family child care" means a private residence licensed to provide early childhood services for no more than seven children at any one time, except that the term includes a residence licensed to provide early childhood services to two additional school-age children.
  8. "Four-year old program" means an approved child care program operated by a public or private educational entity ~~or an early childhood program designed to serve four-year-olds~~ children in the year before kindergarten.
  9. "Group child care" means a child care program licensed to provide early childhood services for thirty or fewer 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. ~~"Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department.~~
  12. "In-home provider" means any person who provides early childhood services to children in the children's home.

- ~~43-12.~~ "Licensed" means an early childhood program has the rights, authority, or permission granted by the department to operate and provide early childhood services.
13. "Licensee" means the person to which a license has been issued under this chapter.
14. "Multiple licensed program" means an early childhood program licensed to provide more than one type of early childhood services.
15. "Operator" means the person that has operational responsibility for the early childhood program and premises at which the early childhood service operates.
- ~~15-16.~~ "Owner" or "operator" means the person who has legal responsibility for the early childhood program and premises at which the early childhood service operates.
- ~~16-17.~~ "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.
- ~~17-18.~~ "Premises" means the indoor and outdoor areas approved for providing early childhood services.
- ~~18-19.~~ "Preschool" means a program licensed to offer early childhood services, which follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled and which serves no child for more than three hours per day.
20. "Provider" means an early childhood program, self-declaration, or registered in-home provider.
- ~~19-21.~~ "Public approval" means a nonlicensed early childhood program operated by a government entity that has self-certified that the program complies with this chapter.
- ~~20-22.~~ "Registrant" means the holder of an in-home provider registration document issued by the department in accordance with this chapter.
- ~~21-23.~~ "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.
- ~~22-24.~~ "Registration document" 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.
- ~~23-25.~~ "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 at least five years through eleven years.
- ~~24-26.~~ "School-age children" means children ~~served under this chapter who are~~ aged at least five years but less than twelve years of age.

~~25-27.~~ "Self-declaration" means voluntary documentation of an individual providing early childhood services in a private residence for up to five children through the age of eleven, of which no more than three may be under the age of twenty-four months.

~~26-28.~~ "Staff member" means an individual:

- ~~a. Who is an employee or operator of an early childhood program or of an early childhood services provider under a self-declaration;~~
- ~~b. Whose activities involve the care, supervision, or guidance of children of an early childhood program provider; or~~
- ~~c. Who may have unsupervised access to children under the care, supervision, or guidance of an early childhood program or early childhood services provider under a self-declaration.~~

### **Definitions. (Effective after June 30, 2025)**

As used in this chapter, unless the context or subject matter otherwise requires:

- ~~1. "Authorized agent~~Applicant" means the ~~human service zone, unless another entity is designated by the department~~person applying for a license to operate early childhood services as an owner of an early childhood program, self-declaration, or registered in-home provider.
2. "Child care center" means an early childhood program licensed to provide early childhood services to nineteen or more children.
3. "Department" means the department of health and human services.
4. "Drop-in care" means the care of children on a one-time, occasional, or unscheduled basis to meet the short-term needs of families.
5. "Early childhood program" means any program licensed under this chapter where early childhood services are provided for at least two hours a day for three or more days a week.
6. "Early childhood services" means the care, supervision, education, or guidance of a child or children, which is provided in exchange for money, goods, or other services. 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 section 15.1-06-06.1.
  - d. Child care, preschool, and prekindergarten services provided to children under six years of age in any educational facility through a program approved by the department.

- e. Child care provided in facilities operated in connection with a church, business, or organization where children are cared for during periods of time not exceeding four continuous hours while the child's parent is attending church services or is engaged in other activities, on 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 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. Head start and early head start programs that are federally funded and meet federal head start performance standards.
  - j. Child care provided in a medical facility by medical personnel to children who are ill.
7. "Family child care" means a private residence licensed to provide early childhood services for no more than seven children at any one time, except that the term includes a residence licensed to provide early childhood services to two additional school-age children.
8. "Group child care" means a child care program licensed to provide early childhood services for thirty or fewer children.
9. "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.
- ~~10. "Human service zone" means a county or consolidated group of counties administering human services within a designated area in accordance with an agreement or plan approved by the department.~~
- ~~11. "In-home provider" means any person who provides early childhood services to children in the children's home.~~
- ~~12-11. "Licensed" means an early childhood program has the rights, authority, or permission granted by the department to operate and provide early childhood services.~~
12. "Licensee" means the person to which a license has been issued under this chapter.
13. "Multiple licensed program" means an early childhood program licensed to provide more than one type of early childhood services.
14. "Operator" means the person that has operational responsibility for the early childhood program and premises at which the early childhood service operates.

15. "Owner" or "operator" means the person who has legal responsibility for the early childhood program and premises at which the early childhood service operates.
- 15-16. "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.
- 16-17. "Premises" means the indoor and outdoor areas approved for providing early childhood services.
- 17-18. "Preschool" means a program licensed to offer early childhood services, which follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled and which serves no child for more than three hours per day.
19. "Provider" means an early childhood program, self-declaration, or registered in-home provider.
- 18-20. "Public approval" means a nonlicensed early childhood program operated by a government entity that has self-certified that the program complies with this chapter.
- 19-21. "Registrant" means the holder of an in-home provider registration document issued by the department in accordance with this chapter.
- 20-22. "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.
- 21-23. "Registration document" 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.
- 22-24. "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 at least five years through eleven years.
- 23-25. "School-age children" means children ~~served under this chapter who are~~ aged at least five years but less than twelve years of age.
- 24-26. "Self-declaration" means voluntary documentation of an individual providing early childhood services in a private residence for up to five children through the age of eleven, of which no more than three may be under the age of twenty-four months.
- 25-27. "Staff member" means an individual:
- a. Who is an employee or operator of an early childhood program ~~or of an early childhood services provider under a self-declaration;~~
  - b. Whose activities involve the care, supervision, or guidance of children of an early childhood program provider; or

- c. Who may have unsupervised access to children under the care, supervision, or guidance of an early childhood program or early childhood services provider under a self-declaration.

**SECTION 2. 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

1. Except as provided under subsection 2, for the purpose of determining the number of children receiving early childhood services, all children present on the premises and under the age of twelve years must be counted for an in-home, self-declaration, family child care, group child care, child care center, and preschool.
2. An in-home, self-declaration, family child care, and group child care provider's own child, foster child, or grandchild over the age of eleven are exempt for the purpose of determining the number of children receiving early childhood services under this section.
3. For the purpose of determining the number of children receiving early childhood services, all children present on the premises aged at least five years through age eleven must be counted for school-age child care.
4. 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 3. AMENDMENT.** Section 50-11.1-02.3 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-02.3. Early childhood services providers~~staff~~ - Training on infant safe sleep practices.**

The department shall adopt rules to require a staff member of an early childhood service provider and the provider's staff members who are responsible for the care or teaching of children under the age of one to annually complete a department approved sudden infant death syndrome prevention~~safe sleep~~ training course.

<sup>230</sup> **SECTION 4. AMENDMENT.** Section 50-11.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-03. Operation of early childhood services program - License required - Fees.**

1. A license for family child care is required if early childhood services are provided for four or more children ages twenty-four months and under, or six or seven children through age eleven at any one time which includes no more than three children under twenty-four months of age.
2. A license for group child care is required if early childhood services are provided for at least eight and no more than thirty children at any one time.

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<sup>230</sup> Section 50-11.1-03 was also amended by section 3 of House Bill No. 1144, chapter 184.

3. A license for a child care center is required if early childhood services are provided for more than thirty children at any one time.
4. Except as provided under subsection 5, a person may not establish or operate a family child care, group child care, preschool, school-age child care, or child care center unless licensed to do so by the department.
5. A governmental organization may not establish or operate a family child care, group child care, preschool, 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, preschool, or school-age child care, or to child care centers.
6. A license is not required for onsite child care services located in the actual building in which the child's parent is employed, not to exceed ten children per location.
7. An applicant for a license shall submit the following nonrefundable fees with the application:
  - a. The ~~operator~~owner of a family child care 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~~owner of a group child care 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~~owner of a preschool 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~~owner 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~~owner of a multiple licensed 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.
8. An applicant for a license who currently holds a license or self-declaration shall submit the nonrefundable fees set forth in subsection 7 with the application at least sixty days and no more than ninety days before the expiration date of the applicant's current license or self-declaration. If the nonrefundable fees and application are submitted less than sixty days before the expiration date of the applicant's current license or self-declaration, the applicant shall submit with the application two times the nonrefundable fees set forth in subsection 7.
9. In addition to any criminal sanctions or other civil penalties that may be imposed pursuant to law, the ~~operator~~owner of an early childhood program who, after being given written notice by 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 dollars

per day for each day of operation without 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.

10. All fees collected under subsections 7 and 8 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 5. 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.**

1. An application for operation of an early childhood 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 premises to be used by the early childhood program applying for a license. The applicant for a license and the staff members, and, if the application is for a program that will be located in a private residence, every individual living in that residence 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~~ confirmed decision 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 program within thirty days of receipt of a completed application and all supporting documents by the department and upon a showing:
  - a. The premises to be used are in fit and sanitary condition, are properly equipped to provide for the health and safety for all children, and are maintained according to rules adopted by the department;
  - b. Staff members are qualified to fulfill the duties required of the staff members according to the provisions of this chapter and standards prescribed for staff member qualifications by the rules of the department;
  - c. The application and supporting documents do not include any fraudulent or untrue representations;
  - d. ~~The owner, operator, or~~ Neither the applicant has not nor anyone who is listed on the application has had a previous license or self-declaration denied or revoked within the twelve months before the date of the current application, unless waived by the department after the department considers the health and safety of children and the licensing history of the owner, operator, or applicant;
  - e. ~~The owner, operator, or~~ Neither the applicant has not nor anyone who is listed on the application has had three or more previous licenses or self-declarations denied or revoked. The most recent revocation or denial may not have occurred within the three years immediately preceding the application date;

- f. ~~The program applicant paid its license fees and any penalties and sanctions previously assessed against the program applicant or any program the applicant is associated with as required by sections 50-11.1-03 and 50-11.1-07.4; and~~
- g. ~~The family child care owner or operator and staff~~ Staff members have received training and are currently certified in infant and pediatric cardiopulmonary resuscitation, including the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department, and are currently certified in first aid by a program approved by the department; ~~and~~
- h. ~~The group child care, preschool, school-age child care, or child care center, at all times during which early childhood services are provided, staff members have received training and are currently certified in infant and pediatric cardiopulmonary resuscitation, including the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department, and 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 program may not be effective for longer than two years.
  3. The department may consider the applicant's past 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. The department shall consider issuing a provisional or restricted license before revoking a license. The department may require the ~~owner or operator of an early childhood program applicant or licensee~~ to provide a compliance plan to address compliance issues with this chapter and rules of the department. The department shall review the compliance plan before issuing a provisional or restricted license. The department shall approve the provisional license if the department approves the compliance plan. The department may revoke a license if the ~~owner and operator fail~~ licensee fails to comply with the department approved compliance plan or for any additional violations of this chapter or rules of the department.
  5. The department shall notify the ~~owner or licensee and operator~~ that the ~~owner or licensee and operator~~ is required to post a notice of late application at the early childhood program premises if the department has not received a completed application and all supporting documents for licensure or self-declaration renewal at least thirty days before the expiration date of the early childhood program's license.

**SECTION 6. 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 document - Term.**

An in-home provider may apply for a registration document from the department. The department ~~or the department's authorized agent~~ shall determine whether the applicant meets the standards and shall issue or deny a registration document based upon that determination. A registration document for an in-home provider may not be effective for longer than one year. The application and supporting documents may 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~~ confirmed decision 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 7. AMENDMENT.** Section 50-11.1-06.2 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-06.2. Background investigations - Fees.**

1. Upon a determination by the department a criminal history record check is appropriate, the following individuals are to obtain two sets of the individual's fingerprints from a law enforcement agency or other local agency authorized to take fingerprints:
  - a. A provider holding or an applicant for early childhood services licensure, self-declaration, or in-home provider registration;
  - b. Emergency designees and staff members of providers holding and applicants for early childhood services licensure, self-declaration, or in-home provider registration; and
  - c. Household members of a residence out of which early childhood services are provided.
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 the department's authorized agent~~.
3. If the ~~division~~ department has no record of a ~~determination of services required~~ confirmed decision for child abuse or neglect, the ~~division~~ department shall submit the fingerprints to the bureau of criminal investigation to determine if there is any criminal history record information regarding the applicant, 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 the department's authorized agent~~.
5. The ~~division~~ department may charge a fee not to exceed thirty dollars for the purpose of processing the criminal history record information application.
6. The ~~division~~ department 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.
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 an in-home provider may not be required to submit to a criminal history record check authorized under section 50-06-01.9.
10. Unless an individual was separated from ~~childcare~~ employment by a provider of early childhood services for more than one hundred eighty days, a criminal history record check conducted under this section and subsection 3 of section 50-06-01.9 is valid for five years, after which the department shall require another criminal history record check.

**SECTION 8. AMENDMENT.** Section 50-11.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-07. Investigation of 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 ~~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 their premises, the qualifications ~~of a provider of early childhood services~~, 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 fire marshal, or the fire marshal's designee, shall inspect the premises for which a license, four-year old program approval, or self-declaration is applied or issued and shall report the findings to the department ~~or the department's authorized agent~~.
3. A licensee, holder of a self-declaration, or registrant shall:
  - a. Maintain records as the department prescribes regarding each child in 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, upon the forms furnished provided in the manner prescribed by the department, facts the department may require with reference to each child;
  - b. Admit for inspection the department ~~or the department's authorized agent~~ and open for examination all records, books, and reports; and
  - c. Notify the parent of each child receiving early childhood services and all staff members of the process for reporting a complaint or a suspected licensing violation.
4. Except as provided in subsection 5, all records and information maintained with respect to 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 concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary;
  - d. To a provider or applicant that provides or provided care for the child; or
  - e. As outlined in a department-approved data sharing agreement.
5. ~~A provider of early childhood services~~, upon the request of the parent of a child for whom the provider provides such services, shall make available to the parent a list of the names, telephone numbers, and addresses of the parents of children for whom early childhood services are provided. The list may include only the names, telephone numbers, electronic mail addresses, and addresses of parents 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 9. 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~~, by certified mail or electronic mail, shall send copies of any correction order or notice of noncompliance, to the owner and operator of the early childhood program or holder of a self-declaration.

**SECTION 10. 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. If the department ~~or the department's authorized agent~~ finds, upon inspection, the program, self-declaration, or premises is not in compliance with this chapter or the rules adopted under this chapter, the department ~~or the department's authorized agent~~ may issue a correction order to the program licensee or holder of a 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 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 licensee or holder of a self-declaration fails to comply with the correction order in a timely

fashion. This section does not apply to an applicant's failure to comply with subsection 8 of section 50-11.1-03 or subdivision c of subsection 1 of section 50-11.1-16.

2. ~~Within thirteen business days of the receipt upon mailing or three days upon electronic transmission of the correction order, the licensee of the early childhood program or the holder of a self-declaration shall notify the parent of each child receiving early childhood services that a correction order has been issued. In addition to providing notice to the parent of each child, the licensee or holder of a self-declaration shall post the correction order in a conspicuous location upon the early childhood premises until the violation has been corrected or for five days, whichever is longer.~~

**SECTION 11. 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.**

~~The department or the department's authorized agent shall reinspect or review an early childhood program or holder of a self-declaration that was issued a correction order under section 50-11.1-07.2, at the end of the period allowed for correction. If, upon reinspection or review, the department determines the program or holder of a self-declaration has not corrected a violation identified in the correction order, the department shall mail or send by electronic mail to the program or the holder of a self-declaration, by certified mail, a notice of noncompliance with the correction order. The notice must specify the violations not corrected and the penalties assessed in accordance with section 50-11.1-07.5.~~

**SECTION 12. 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.**

~~If the department or the department's authorized agent issues a notice of noncompliance with a correction order to an early childhood program or holder of a self-declaration, the department shall assess fiscal sanctions in accordance with a schedule of fiscal sanctions established by rules adopted by the department under subsection 2 of section 50-11.1-08. The department shall assess a fiscal sanction for each day the early childhood program or holder of a self-declaration remains in noncompliance after the allowable time period for the correction of violations ends and the sanction must continue as set forth in section 50-11.1-07.6 until the department receives notice indicating the violations are corrected. The fiscal sanction for a specific violation may not exceed one hundred dollars per day of noncompliance.~~

**SECTION 13. 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 program~~A licensee or holder of a self-declaration promptly shall notify the department ~~or the department's authorized agent~~ in writing if 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 violation must stop accruing. ~~The department or the department's authorized agent shall reinspect or review 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 or review, the department determines a violation has not been corrected, the department shall resume the daily assessment of fiscal sanction and shall add the amount of fiscal sanction which otherwise would have accrued during the period before resumption to the total assessment due from the ~~programlicensee~~ or holder of the self-declaration. The department ~~or the department's authorized agent~~ shall notify the ~~facilitylicensee~~ or holder of a self-declaration of the resumption by certified mail or electronic mail. Recovery of the resumed fiscal sanction must be stayed if the ~~operator of the facilitylicensee or holder of a self-declaration~~ makes a written request for an administrative hearing in the manner provided in chapter 28-32, if written request for the hearing is made to the department within ~~ten~~fifteen days upon mailing or ten days upon electronic transmission of the notice of resumption.

**SECTION 14. 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~~twenty days ~~after receipt upon mailing or fifteen days upon electronic transmission~~ 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 ~~programlicensee~~ or holder of a self-declaration makes written request to the department for an administrative hearing within ~~ten~~fifteen days after upon mailing or ten days upon electronic transmission of the notice to the early childhood programlicensee 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 programlicensee~~ or the holder of a self-declaration. The department ~~or the department's authorized agent~~ shall notify the ~~early childhood programlicensee~~ or the holder of a self-declaration of the resumption by certified mail or electronic mail.

**SECTION 15. 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 - Assessment upon a report of child abuse or neglect - Notification.**

1. The department may:
  - a. Suspend a license, self-declaration, or registration document at any time after the onset of a child abuse and neglect assessment alleging the owner or ~~operator~~staff, the holder of a self-declaration, or the in-home provider:
    - (1) Committed child abuse, including child sexual abuse, law enforcement has been involved, and continued operation is likely to jeopardize the health and safety of the children; or
    - (2) Neglected a child, law enforcement has been involved, and continued operation is likely to jeopardize the health and safety of the children.
  - b. Suspend a license, self-declaration, or registration document upon a child abuse or neglect ~~services required determination~~confirmed decision indicating a child has been abused or neglected by the owner or

- ~~operator~~~~staff~~, the holder of a self-declaration, or the in-home provider, if continued operation is likely to jeopardize the health and safety of the children present.
- c. Prohibit the presence of an accused owner, ~~operator~~, holder of a self-declaration, in-home provider, staff member, or adult or minor household member of the early childhood program, self-declaration, or in-home provider from the early childhood premises when children are in child care, upon a report of child abuse or neglect at the premises of the early childhood program, holder of the self-declaration, or registration, or involving a staff member or adult or minor household member if continued operation or the presence of the accused individual is likely to jeopardize the health and safety of the children present.
2. Notwithstanding sections 50-11.1-07 and 50-25.1-11, the department:
    - a. Shall notify the parent of any child receiving early childhood services if that program's license, self-declaration, or registration document is suspended.
    - b. Shall notify the owner; and operator, holder of a self-declaration, or in-home provider and shall notify the parent of any child receiving early childhood services if an owner; ~~operator~~, holder of a self-declaration, in-home provider, staff member, or adult or minor household member of the program providing care of the child is the subject of a child abuse and neglect assessment and the department determines:
      - (1) The reported child abuse or neglect places children in the early childhood program, self-declaration, or in-home provider at risk of abuse or neglect; and
      - (2) If the reported child abuse or neglect occurred outside the care, supervision, or guidance of children in an early childhood program, self-declaration, or in-home provider, there was an impact or is a potential impact on care, supervision, or guidance of the children in the early childhood program, self-declaration, or in-home provider.
    - c. Shall notify the owner; and operator, holder of a self-declaration, or in-home provider and shall notify the parent of any child receiving early childhood services that an owner; ~~operator~~, holder of a self-declaration, in-home provider, staff member, or adult or minor household member is prohibited from the premises of the early childhood program, self-declaration, or in-home provider under subsection 1.
  3. Upon the conclusion and disposition of a child abuse and neglect assessment for which a ~~determination services are required~~confirmed decision is found or for which the department issued a notice under subsection 2, the department shall provide notification of the disposition to the parent of each child who at the time of the determination is receiving early childhood services.
  4. Notwithstanding any provision to the contrary, any action taken under this section may preclude an individual's ability to operate pending an appeal.
  5. Notwithstanding subsections 2 and 3:
    - a. The department may reconsider a suspension or prohibition.

- b. If law enforcement requests a delay in notification, the department may delay notifying the owner, and operator, holder of a self-declaration, or in-home provider and delay notifying the parent of any child receiving early childhood services. To be valid, a law enforcement request for a notification delay must be provided to the department in writing within forty-eight hours of law enforcement receiving notification of an alleged criminal matter. A notification delay may last up to sixty days and, upon request of law enforcement, may be renewed.

**SECTION 16. 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 services~~ provider upon proper showing of any of the following:
  - a. Any of the applicable conditions set forth in sections 50-11.1-04, 50-11.1-06, and section 50-11.1-17 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, 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 the department determines has a direct bearing upon 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 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 of each child receiving early childhood services from the ~~early childhood services~~ provider that is the subject of the revocation notice.

**SECTION 17. 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 services - Authority of department to make grants - Federal funds - 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 nonprofit entities may apply to the department for funding. Applicants shall apply for 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 public or private nonprofit entity or the department providing early childhood resource and referral services shall identify all existing related early childhood services through information provided by all relevant public and private nonprofit entities in the areas of service and must develop a resource file of these services which must be maintained and updated at least quarterly. The services must include early childhood services as identified in section 50-11.1-02.
4. Each public or private nonprofit entity or the department providing early childhood resource and referral services shall establish a referral process that responds to parental needs for information, fully ensures the confidentiality of records and information as required under subsection 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 public or private nonprofit entity or the department shall publicize its services through popular media sources, agencies, employers, and other appropriate methods.
5. All early childhood services resource and referral public and private nonprofit entities or the department shall maintain documentation of the number of calls and contacts 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 child care is needed~~ required or requested by the department.
6. Each early childhood services resource and referral public or private nonprofit entity or the department 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 child care resource and referral public or private nonprofit entity or the department 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 18. 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 rules - Injunction.**

The department ~~or the department's authorized agent~~ may seek injunctive action against an individual who provides early childhood services for which licensure is required, ~~an early childhood program~~ licensee, holder of a self-declaration, or in-home provider in the district court through proceedings instituted by the attorney general on behalf of the department ~~or by a state's attorney on behalf of the authorized agent~~, if:

1. There is a violation of this chapter or a rule adopted under this chapter; or
2. ~~An early childhood program~~ A licensee, holder of a self-declaration, or in-home provider, after notice and opportunity for hearing on the notice of noncompliance, 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 19. AMENDMENT.** Section 50-11.1-14 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-14. Workforce development.**

1. The department may establish a statewide system to build systematic early childhood workforce voluntary training which may include ~~distance~~ various learning formats, a professional registry, certificates, and specializations.

2. The department may charge reasonable fees for all training and development courses to offset costs. 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 providing training and development courses to providers and staff members of early childhood services.

**SECTION 20. AMENDMENT.** Section 50-11.1-14.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-14.1. 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~~programs. 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~~program. The department may provide technical assistance and support to an early childhood ~~facility~~program that applies for quality improvement and may provide financial incentives to an early childhood ~~facility~~program that sustains and increases program quality. The department may contract with a public or private, nonprofit agency~~entity~~ to provide technical assistance under this subsection.
3. The department may provide supports and incentives to build child care capacity or quality, 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~~Direct payments~~ to programs with a viable business plan and sustainable operations, to support early childhood ~~facility~~program development, operation, and expansion in areas with a demonstrated need.
  - c. Direct payments to staff to incentivize training and professional development in the manner prescribed by the department.
4. The department shall coordinate with other state agencies as necessary to implement the provisions of this section.
5. The requirements of chapter 54-44.4 do not apply to the selection of a recipient, award, or payments made under this section.

**SECTION 21. AMENDMENT.** Section 50-11.1-15 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-15. Early childhood services advisory board - Membership - Duties.**

1. The early childhood services advisory board is composed of seven members appointed by the ~~director~~commissioner 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. 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~~two hundred dollars per day for the expenses incurred by the member which relate to the hiring of a substitute ~~early childhood services provider or staff~~ 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 each time the department reviews early childhood services rules;
  - 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~~.

**SECTION 22. AMENDMENT.** Section 50-11.1-16 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-16. Self-declaration - Approved application required - Fees.**

1. a. An application for self-declaration is voluntary. If an individual applies 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.
- c. An applicant for self-declaration, who currently holds a license or self-declaration, shall submit the nonrefundable fees with the application at least sixty days and no more than ninety days before the expiration date of the applicant's current license or self-declaration. If the nonrefundable fees and application are submitted less than sixty days before expiration of the applicant's current license or self-declaration, the applicant shall submit with the application two times the regular nonrefundable fees.

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 23. AMENDMENT.** Section 50-11.1-17 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-17. 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 confirmed decision for child abuse or neglect filed against them. Except as otherwise provided, the department shall approve a self-declaration within thirty days of receipt of a completed application and all supporting documents by the department and upon the applicant's declaration:
  - a. The premises to be used are in fit and sanitary condition to provide for the health and safety of all children and are 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 the rules of the department;
  - 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 may not 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 and sanctions assessed against the program holder of a self-declaration required by sections 50-11.1-03 and 50-11.1-07.4;
  - g. The applicant is currently certified in infant and pediatric cardiopulmonary resuscitation, including the use of an automated external defibrillator by the American heart association, the American red cross, or a similar cardiopulmonary resuscitation and automated external defibrillator training program approved by the department;
  - h. The emergency designee used by the applicant, if any, is currently certified in infant and pediatric cardiopulmonary resuscitation, including the use of an automated external defibrillator by the American heart association, the American red cross, or a similar cardiopulmonary resuscitation and

- automated external defibrillator training program approved by the department;
- i. The applicant is currently certified in first aid through a training program approved by the department; and
  - j. The application and supporting documents do 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. The department shall consider issuing a provisional or restricted self-declaration document before revoking a self-declaration document. The department may require the holder of a self-declaration to provide a compliance plan to address compliance issues with this chapter and rules of the department. The department shall review the compliance plan before issuing a provisional or restricted self-declaration document. The department shall approve the provisional self-declaration document if the department approves the compliance plan. The department may revoke a self-declaration document if the holder of a self-declaration fails to comply with the department approved compliance plan or for any additional violations of this chapter or rules of the department.
  4. The department shall notify the holder of a self-declaration that the holder of a self-declaration is required to post a notice of late application at the self-declaration premises if the department has not received a completed application and all supporting documents for licensure or self-declaration renewal at least thirty days before the expiration date of a self-declaration.

**SECTION 24. AMENDMENT.** Section 50-11.1-18 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-18. Early childhood services inclusion support services and grant program.**

1. The department may establish in ~~collaboration with the department of commerce~~ an early childhood services inclusion ~~grants~~support services program for early childhood services providers that provide, ~~or applicants for licensure who indicate they will provide,~~ care for children with disabilities, special needs, or developmental delays. ~~The grant program must be designed~~early childhood inclusion support services program may offer direct payments and technical assistance to:
  - a. Support the staffing needs to expand the ability to care for children with disabilities, special needs, or developmental delays; and
  - b. Assist in modifying or adapting the early childhood services setting as needed to address the health, safety, and developmental needs of children with disabilities, special needs, or developmental delays.
2. The department may fund early childhood services specialists to make available technical assistance to ~~early childhood services providers that care for children with~~ disabilities, special needs, or developmental delays. The technical assistance program must be designed to:

- a. Assist ~~early childhood services~~ providers that request support and information regarding caring for children with disabilities, special needs, or developmental delays;
  - b. Assist ~~early childhood services~~ providers in adapting the program environment and care practices to meet the individual child's needs and to build the ~~early childhood services~~ providers' capacity to serve children with disabilities, special needs, or developmental delays;
  - c. In partnership with the child's parents and health care provider, assist the ~~early childhood services~~ provider in the development or coordination of care plans for children with disabilities, special needs, or special health care needsdevelopmental delays relevant to the care setting;
  - d. In partnership with the child's parents, foster communication with the team of specialists serving the child to ensure consistency in therapy practices and appropriate approaches;
  - e. Provide classroom training to ~~early childhood services~~ providers to assist the providers in the integration of children with disabilities, special needs, or developmental delays; and
  - f. As requested by the ~~early childhood services~~ providers, conduct one-on-one training at the provider's business premises to assist the provider in the integration of children with disabilities, special needs, or developmental delays.
3. ~~The department may establish a grant review committee to assist in the development of grant guidelines, the review of applications, and the determination of awards or denials. The membership of the grant review committee must include representation from each of the following:~~
    - a. ~~The department of health and human services;~~
    - b. ~~The department of public instruction;~~
    - c. ~~The North Dakota training and information center;~~
    - d. ~~Child care aware of North Dakota;~~
    - e. ~~Parents of children with disabilities or at risk for developmental delays; and~~
    - f. ~~Other appropriate partners.~~
  4. To be eligible for the grant early childhood inclusion support services program, the ~~early childhood services~~ provider must:
    - a. ~~Be state-licensed, a licensed early childhood program or self-declared, or in the process of applying for licensure;~~
    - b. Collaborate with service providers that provide formal supports to the child or children with disabilities, special needs, or developmental delays; and
    - c. Work with the child's family and an inclusion or health specialist to complete a care plan appropriate for the child care setting.

5. ~~The department shall give priority consideration to licensed early childhood services providers that care for children with disabilities.~~
- 6.4. ~~For purposes of this section, a child with disabilities or who is at risk for developmental delays special needs includes any child in this state between the ages of birth and through twelve years who receives support through either public or private services disability-related services and support and includes a child who is in the process of being evaluated for public or private ~~formal support~~ disability-related services and support. A child with special needs includes a child who is at risk for developmental delays ~~includes~~ including any child between the ages of birth and through twelve years who received foster care services; who has a previous substantiated history as a victim of child abuse, neglect, or domestic violence; who is homeless; who has documented special health care needs; or who has a parent with a significant disability.~~
- 7.5. The department may accept gifts, grants, and donations from any source to assist the department in the establishment and implementation of the early childhood services inclusion support services ~~and grant program~~. Any gifts, grants, and donations received are appropriated to the department on a continuing basis for the purpose of funding the early childhood services inclusion support services ~~and grant program~~ under this section.
6. The requirements of chapter 54-44.4 do not apply to the selection of a recipient, award, or payments made under this section.

**SECTION 25. AMENDMENT.** Section 50-11.1-19 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-19. Play area regulation.**

~~If a facility licensed an early childhood program under this chapter has sufficient indoor recreation space, the department may not require outdoor play space.~~

<sup>231</sup> **SECTION 26. AMENDMENT.** Section 50-11.1-22 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-22. ~~Early childhood grant for best~~ Best in class four-year old experiences program. (Expired effective July 1, 2025)**

1. ~~A four-year old program deemed eligible under section 50-11.1-23 may submit an application for the best in class four-year old experiences grant program. An approved program is eligible for an annual award of one hundred twenty thousand dollars per based on program characteristics as established by the department, including approved group size. The grant award must be matched with no less than twenty thousand dollars in other funds in an amount and manner established by the department. The department shall assign a program support coach to each approved program. An approved program:~~
  - a. Shall utilize the assigned support coach and utilize the sliding fee scale for parent fees, as established by the department.

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<sup>231</sup> Section 50-11.1-22 was also amended by section 30 of Senate Bill No. 2012, chapter 44.

- b. May use grantawarded funds to support the provision of quality early childhood experiences, including expenditures related to staffing, training, equipment, and supplies.
  - c. May not use grantawarded funds for construction or rehabilitation. An approved program must enter a grantan agreement with the department.
2. The department may not collect equipment or supplies purchased with grantawarded funds from the approved program after successful completion of the term of the grantagreement.
  3. The requirements of chapter 54-44.4 do not apply to the selection of a recipient, award, or payments made under this section.

<sup>232</sup> **SECTION 27. AMENDMENT.** Section 50-11.1-23 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-23. Eligibility for best in class four-year-old experiences grantprogram. (Expired effective July 1, 2025)**

1. ~~A~~An approved four-year old program, federally funded head start program, or early childhood program may submit, in the form and manner prescribed by the department, an application to the department ~~for a grant~~ under section 50-11.1-22, if the provider certifies to the department the provider:
  - a. Operates ~~an approved~~ four-year old program, federally funded head start program, or early childhood program in this state;
  - b. Operates a ~~four-year-old~~ program for children who have reached four years of age before August first in the year of enrollment;
  - c. Operates a ~~four-year-old~~ program that has a duration of at least four hundred hours over a period of at least thirty-two consecutive weeks;
  - d. Incorporates within the ~~four-year-old~~ program at least ten hours of research-based family engagement;
  - e. Has been determined to meet the standards and expectations of no less than step three in the North Dakota early childhood quality improvement system; has met the standards and expectations of a nationally recognized early childhood accrediting entity; has met the federal performance standards for head start; or has obtained approval or certification from the department of public instruction;
  - f. ~~Is willing to admit~~Admits children of all learning abilities ~~into the four-year-old program;~~
  - g. ~~Is willing to admit~~Admits children who receive assistance from the child care assistance program ~~into the four-year-old program;~~ and
  - h. ~~Is willing to operate~~Operates in compliance with the grantprogram requirements, including:

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<sup>232</sup> Section 50-11.1-23 was also amended by section 31 of Senate Bill No. 2012, chapter 44.

- (1) ~~Maintaining the recommended group size for number of children served in the four-year-old program;~~
  - (2) Complying with requirements related to qualifications, training, and professional development of staff delivering services in the four-year-old best in class program; and
  - ~~(3)~~(2) Adhering to expectations established by the department related to four-year-old best in class program monitoring, operation, and oversight.
2. The department may distribute grants funds under this section to approved four-year-old programs, including four-year-old programs operated as early childhood programs by educational facilities or federally funded head start programs or in connection with a church, business, or organization that operates a four-year-old program applicants.
  3. The department may recapture grant funds distributed to an approved four-year-old from an awarded program that is found by the department to be out of compliance with requirements established for the best in class four-year-old experiences grant program.
  4. The requirements of chapter 54-44.4 do not apply to the selection of a recipient, award, or payments made under this section.

<sup>233</sup> **SECTION 28. AMENDMENT.** Section 50-11.1-24 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-24. ~~Grant program~~ Program data collection - Requirements. (Expired effective July 1, 2025)**

~~The state agency with approval authority over four-year-old programs, with the advice and consent of the department, shall implement a uniform system for the accounting, budgeting, and reporting of data by any four-year-old approved best in class program provider to whom or to which grants direct payments are distributed under section 50-11.1-23. Grants Awarded funds may be withheld or forfeited, in whole or in part, if information required in accordance with this section is not submitted at the time or in the manner requested by the state agency with approval authority over four-year-old programs. A grant recipient department. An awarded program shall consent to provide information needed to comply with data collection and program evaluation requirements. The state agency with approval authority over four-year-old programs shall disclose the requested information to the department.~~

**SECTION 29. AMENDMENT.** Section 50-11.1-26 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-26. North Dakota early childhood council - Duties - Reports.**

The North Dakota early childhood council shall:

1. Review the availability and provision of early childhood services in this state;

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<sup>233</sup> Section 50-11.1-24 was also amended by section 32 of Senate Bill No. 2012, chapter 44.

2. Identify opportunities for public and private sector collaboration in the provision of early childhood services in this state;
3. Identify ways to assist with the recruitment and retention of individuals interested in working as providers of early childhood services, including training and continuing education or professional development opportunities;
4. Seek the advice and guidance of individuals uniquely familiar with the nature, scope, and associated challenges of providing early childhood services in geographically and socioeconomically diverse settings, and develop recommendations pertaining to the short-term and longer-term improvement and expansion of early childhood services in this state; and
5. Provide a biennial report regarding the council's findings and recommendations to the governor and the legislative assembly.

**SECTION 30. AMENDMENT.** Subsection 2 of section 50-25.1-11 of the North Dakota Century Code is amended and reenacted as follows:

2. In accordance with subsection 3 of section 50-11.1-07.8, upon the conclusion and disposition of a child abuse and neglect assessment for which a determination of confirmed decision is found, the department or authorized agent shall notify the owner, operator, holder of a self-declaration, or in-home provider and shall notify the parent or legally appointed guardian of a child, who at the time of notification is receiving early childhood services under chapter 50-11.1, of the name of the subject and provide a summary of the facts and the results of a child protection assessment conducted under this chapter if the report made under this chapter involves the owner, operator, holder of a self-declaration, or in-home provider; or involves ~~an adult or minor~~ staff member or adult or minor household member of the early childhood program, self-declaration, or in-home provider, who is providing care to the child.

Approved April 12, 2023

Filed April 13, 2023

## CHAPTER 436

### HOUSE BILL NO. 1530

(Representatives Schobinger, Mitskog, Nelson, O'Brien, Stemen)  
(Senators Dever, Hogan, Lee)

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to covered services for medical assistance.

#### 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 benefits - Family adaptive behavior treatment and guidance - Dental screening and assessments - Dental case management - Teledentistry - Applied behavioral analysis.**

Medical assistance coverage must include payment for the following services:

1. Family adaptive behavioral treatment and guidance to educate parents and caregivers to continue to carry out plans and recommendations of applied behavioral analysis.
2. Dental screening and assessment of patients to identify individuals in need of additional assessment, diagnostic, and treatment services.
3. Dental case management for maintenance of oral health for special populations, including elderly, special needs, medically fragile, and children.
4. Asynchronous teledentistry to reduce barriers to dental care through outreach programs and to integrate oral health into general health care settings to identify and refer treatment needs.
5. The services identified in subsections 2, 3, and 4 do not apply to Medicaid expansion.

Approved April 12, 2023

Filed April 13, 2023

## CHAPTER 437

### SENATE BILL NO. 2265

(Senators Hogan, Lee)  
(Representatives Dobervich, Strinden)

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to a dual special needs plan for Medicaid; and to provide an appropriation.

#### 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:

##### **Dual special needs plan.**

By January 1, 2025, the department shall implement at least one dual special needs plan for Medicare and Medicaid dual-eligible Medicaid recipients. The department shall establish standards for care coordination services the dual special needs plan must provide to recipients.

**SECTION 2. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES - DUAL SPECIAL NEEDS PLAN.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$237,516, or so much of the sum as may be necessary, to the department of health and human services for the purpose of funding a full-time equivalent position to implement the Medicaid dual special needs plan, for the biennium beginning July 1, 2023, and ending June 30, 2025.

Approved April 28, 2023

Filed April 29, 2023

## CHAPTER 438

### HOUSE BILL NO. 1047

(Human Services Committee)

(At the request of the Department of Health and Human Services)

AN ACT to amend and reenact section 50-24.1-29 of the North Dakota Century Code, relating to the requirement that health insurers provide certain information to the department of health and human services.

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

**SECTION 1. AMENDMENT.** Section 50-24.1-29 of the North Dakota Century Code is amended and reenacted as follows:

#### **50-24.1-29. Insurers to provide certain information to the department.**

1. For purposes of this section:
  - a. "Department" means the department of health and human services or its agent.
  - b. "Health insurer" includes self-insured plans, group health plans as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1167(1)], service benefit plans, managed care organizations, pharmacy benefit managers, or other parties that legally are responsible by statute, contract, or agreement for payment of a claim for a health care item or service.
2. a. As a condition of doing business in this state, health insurers shall provide to the department upon its request and in a manner prescribed by the department information about individuals who are eligible for medical assistance so the department may determine during what period the individual or the individual's spouse or dependents may be or may have been covered by a health insurer and the nature of the coverage provided by the health insurer, including the name, address, ~~and~~ identifying number of the plan, and duration of the health insurance coverage. Notwithstanding any other provision of law, every health insurer, not more frequently than twelve times in a year, shall provide to the department upon its request information, including automated data matches conducted under the direction of the department, as necessary, to:
  - a. (1) Identify individuals covered under the insurer's health benefit plans who are also recipients of medical assistance;
  - b. (2) Determine the period during which the individual or the individual's spouse or the individual's dependents may be or may have been covered by the health benefit plan; and
  - e. (3) Determine the nature of the coverage.



held liable for the release of insurance information to the department or a department agent if the release is authorized under this section.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 439

### HOUSE BILL NO. 1044

(Human Services Committee)

(At the request of the Department of Health and Human Services)

AN ACT to amend and reenact section 50-24.1-32 of the North Dakota Century Code, relating to the medical assistance primary care provider program; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 50-24.1-32 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.1-32. Medical assistance - Services provided by physician assistants and advanced practice registered nurses - Primary care provider case management program.**

1. The medical assistance program must recognize physician assistants and advanced practice registered nurses with the roles of nurse practitioner or certified nurse midwife as primary care providers with the same rights and responsibilities given primary care physicians under the medical assistance program. Any care provided by the physician assistant or advanced practice registered nurse with the roles of nurse practitioner or certified nurse midwife as a primary care provider under the medical assistance program must be within the scope of the physician assistant's or advanced practice registered nurse's respective license.
2. The department shall eliminate the primary care provider case management program.

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective on January 1, 2024.

Approved April 12, 2023

Filed April 13, 2023

## CHAPTER 440

### HOUSE BILL NO. 1322

(Representatives Kreidt, Bellew, Hauck, Rohr)  
(Senator Lee)

AN ACT to amend and reenact section 50-24.4-17 of the North Dakota Century Code, relating to nursing home rate adjustments.

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

**SECTION 1. AMENDMENT.** Section 50-24.4-17 of the North Dakota Century Code is amended and reenacted as follows:

##### **50-24.4-17. Adjustments and reconsideration procedures.**

1. Rate adjustments may be made to correct errors subsequently determined and must also be retroactive to the beginning of the facility's rate year except with respect to rates paid by private-paying residents. ~~Any adjustments that result in a cumulative change of more than one dollar per day from the desk rate will be included in the next subsequent cost report to the extent not corrected by a rate adjustment made pursuant to this subsection.~~
2. Any requests for reconsideration of the rate must be filed with the department's medical services division for administrative consideration within thirty days of the date of the rate notification.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 441

### SENATE BILL NO. 2156

(Senators Lee, Hogan, K. Roers)  
(Representatives Dobervich, M. Ruby, Weisz)

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 medical assistance prior authorization.

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

<sup>234</sup> **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 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;
  - f. One pharmacist or physician representing the brand pharmaceutical industry appointed by the pharmaceutical research and manufacturers of America; and

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<sup>234</sup> Section 50-24.6-02 was also amended by section 125 of House Bill No. 1165, chapter 229.

- g. One pharmacist or physician representing the generic pharmaceutical industry appointed by the ~~generic pharmaceutical association~~ for accessible medicines.
3. Appointed board members shall serve staggered three-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 representatives are nonvoting board members.
4. Voting board members shall select a ~~chairman~~ presiding officer and a vice ~~chairman~~ presiding officer on an annual basis from the board's voting membership. One-half or more of nonvacant voting board member positions constitutes a quorum.
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~~ presiding officer. A board member is entitled to receive from the department or the department's vendor per diem compensation and reimbursement of expenses as determined by the department or the department's vendor, 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.
6. A board member appointed under subdivisions a through d of subsection 2 is not subject to the bona fide resident of the state requirement under section 44-03-04 if the board member is providing services to residents of the state receiving medical assistance through telemedicine or telepharmacy. The affected association shall continue to recruit in-state board members for that board member position and will replace the nonresident board member once the affected association has enough appointees for all of their board member positions.
7. A board member appointed under subdivision f or subdivision g of subsection 2 is not subject to the bona fide resident of the state requirement under section 44-03-04.

**SECTION 2. AMENDMENT.** Section 50-24.6-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.6-04. 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. The department shall work with the medical assistance recipient's health care provider to assure treatment can be found for diagnoses with no compendia supported medications.
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. a. For individuals ~~twenty-one~~eighteen years of age and older, except for quantity limits that may be no less than the pharmaceutical manufacturer's package insert, brand name drugs with a generic equivalent drug for which the cost to the state postrebate is less than the brand name drugs, generic drugs with a brand name equivalent drug for which the cost to the state postrebate is less than the generic drug, or medications that are considered line extension drugs, the department may not prior authorize substantially all drugs in the following medication classes:
    - (1) Antipsychotics;
    - (2) Antidepressants;
    - (3) Anticonvulsants;
    - (4) Antiretrovirals, for the treatment of human immunodeficiency virus;
    - (5) Antineoplastic agents, ~~for the treatment of cancer;~~ and
    - (6) ~~Stimulant medication used for the treatment of attention deficit disorder and attention deficit hyperactivity disorder, except an individual who prescribes this medication at a rate two times higher than the rate of the top ten prescribers excluding the top prescriber may be subject to prior authorization.~~Immunosuppressants, for prophylaxis of organ transplant rejection.
  - b. For individuals under ~~twenty-one~~eighteen years of age, except for quantity limits that may be no less than the pharmaceutical manufacturer's package insert, brand name drugs with a generic equivalent drug for which the cost to the state postrebate is less than the brand name drugs, generic drugs with a brand name equivalent drug for which the cost to the state postrebate is less than the generic drug, or medications that are considered line extension drugs, the department may not prior authorize substantially all drugs in the following medication classes:
    - (1) Antipsychotics;
    - (2) Antidepressants;

- (3) Anticonvulsants;
  - (4) Antiretrovirals, for the treatment of human immunodeficiency virus;
  - (5) Antineoplastic agents, ~~for the treatment of cancer~~; and
  - (6) ~~Stimulant medication used for the treatment of attention deficit-hyperactivity disorder~~Immunosuppressants, for prophylaxis of organ transplant rejection.
- c. The restrictions of subdivision b do not apply for individuals under ~~twenty-one~~eighteen years of age, who have five or more concurrent prescriptions for psychotropic medications.
  - d. Prior authorization for individuals under ~~twenty-one~~eighteen years of age is required for five or more concurrent prescriptions for antipsychotics, antidepressants, anticonvulsants, benzodiazepines, mood stabilizers, sedative, hypnotics, or medications used for the treatment of attention deficit hyperactivity disorder. The department shall grant authorization to exceed the limits after a prescriber requesting authorization consults with a board certified ~~pediatric~~child and adolescent psychiatrist approved by the department.
  - e. The restrictions of this subsection do not apply if prior authorization is required by the centers for Medicare and Medicaid services.
  - f. As used in this subsection, "line extension drug" means a new formulation of a drug. The term does not include an abuse-deterrent formulation of a drug.
  - g. As used in this subsection, "substantially all" means that all drugs and unique dosage forms in the medication classes outlined in paragraphs 1 through 6 of subdivisions a and b are expected to be covered without prior authorization, with the following exceptions:
    - (1) Multisource brands of the identical molecular structure;
    - (2) Extended release products when the immediate-release product is included;
    - (3) Products that have the same active ingredient or moiety; and
    - (4) Dosage forms that do not provide a unique route of administration.
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.
6. The department may negotiate additional rebates from drug manufacturers to supplement the rebates required by federal law governing the medical assistance program. Additionally, the department may join a multistate supplemental drug rebate pool, and if the department negotiates additional rebates outside this pool, any other manufacturer must be allowed to match those rebates.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 442

### SENATE BILL NO. 2030

(Legislative Management)  
(Health Care Committee)

AN ACT to amend and reenact section 50-24.6-09 of the North Dakota Century Code, relating to value-based purchasing for medical assistance.

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

**SECTION 1. AMENDMENT.** Section 50-24.6-09 of the North Dakota Century Code is amended and reenacted as follows:

#### **50-24.6-09. Maximum allowable costs and use of edits.**

1. To promote efficiency and savings in the department's service to eligible medical assistance program recipients, the department shall create and implement the broadest possible list of drugs that can be paid at the maximum allowable costs. To further promote efficiency and savings, the department shall maximize use of edit programs that pertain to payment of medical assistance program pharmaceutical claims. Upon request of a member of the legislative assembly, the department shall provide to that member a summary of edit programs available to the medical assistance program and a description of the department's progress in implementing the edit programs.
2. The department shall participate in current and future innovative rebate and other program options, including value-based purchasing programs, as feasible, reasonable, and cost-effective for the state.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 443

### HOUSE BILL NO. 1435

(Representatives Beltz, Nelson, Schneider, Vigesaa, Weisz)  
(Senators Hogan, Lee, K. Roers, Sickler)

AN ACT to create and enact section 50-24.8-11.1 of the North Dakota Century Code, relating to Medicaid fraud retention of records requirements; and to provide a penalty.

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

**SECTION 1.** Section 50-24.8-11.1 of the North Dakota Century Code is created and enacted as follows:

#### **50-24.8-11.1. Failure to create, retain, and provide records - Penalty.**

1. A person that submits a claim for or receives a payment for a good or service under the state's Medicaid program, at the time the good or service is provided, shall create and retain records as required by rule of the department and chapter 50-24.8.
2. A person that submits a claim for or receives payment for a good or service under the state's Medicaid program which willfully fails to create records at the time the service or good is provided, fails to maintain or retain the records for the length of time stated in the most current provider agreement applicable to that provider, fails to provide records when requested to do so by the department or attorney general, or destroys the records in a manner inconsistent with the most current provider agreement applicable to that provider, is guilty of a class A misdemeanor if the value of the payments, benefits, kickbacks, bribes, rebates, remuneration, services, or claims related to the failure to create, retain, or provide records or related to the destruction of records does not exceed ten thousand dollars and a class C felony if the value is greater than ten thousand dollars.
3. It is an affirmative defense to a prosecution under this section that the records in question were lost or destroyed in a natural disaster or by an act that did not result from the conduct of the defendant.
4. The consequences and punishments under subsections 6 and 7 of section 50-24.8-11 apply to this section.

Approved March 22, 2023

Filed March 23, 2023

## CHAPTER 444

### HOUSE BILL NO. 1434

(Representatives Beltz, Bosch, Dobervich, Stemen, Vigesaa, Weisz)  
(Senators Dever, Lee, Sickler)

AN ACT to amend and reenact section 50-24.8-12 of the North Dakota Century Code, relating to investigative demands and administrative subpoenas of the Medicaid fraud control unit.

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

**SECTION 1. AMENDMENT.** Section 50-24.8-12 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.8-12. ~~Civil~~ Investigative demands and administrative subpoenas - Failure to comply - Confidentiality.**

1. If the attorney general, or a designee, has reason to believe a person may be in possession, custody, or control of documentary material or information relevant to an investigation under this chapter, the attorney general, or a designee, may, before commencing a ~~civil~~ proceeding under section 50-24.8-04 issue in writing and cause to be served upon the person, a ~~civil~~ investigative demand or administrative subpoena requiring the person to, under oath:
  - a. Produce the documentary material for inspection and copying, including exempt and confidential records;
  - b. Answer in writing written interrogatories with respect to the documentary material or information;
  - c. Give oral testimony concerning the subject matter of the investigation, including any documentary material or information; or
  - d. Furnish any combination of the material, answers, or testimony.
2. ~~If a civil investigative demand or subpoena is an express demand for product of discovery, the attorney general or a designee shall cause to be served, a copy of such demand upon the person from which the discovery was obtained and shall notify the person to which such demand is issued of the date on which the copy was served.~~
3. If a person objects to or otherwise fails to comply with a ~~civil~~ investigative demand or administrative subpoena served upon that person under subsection 1, the attorney general may file in the district court a petition for an order to enforce the demand or subpoena. If the court finds the demand or subpoena is proper, the court shall order the person to comply with the demand or subpoena and may grant such injunctive or other relief as may be required until the person complies with the demand or subpoena. Notice of hearing on the petition and a copy of the petition must be served upon the person that may appear in opposition to the petition. If the attorney general

prevails in an action brought under this subsection, the court shall award to the attorney general reasonable attorney's fees, costs, and expenses incurred in bringing the action.

- 4.3. Any testimony taken or material produced under this section must be kept confidential by the attorney general before bringing an action against a person under this chapter for the violation under investigation, unless ~~confidentiality;~~
- a. Confidentiality is waived by the person being investigated and the person that testified, answered interrogatories, or produced material, ~~or disclosure;~~
  - b. Disclosure is authorized by the court;
  - c. Disclosure is made to other law enforcement agencies; or
  - d. Disclosure is made to non-law enforcement investigative partners with which the attorney general deems necessary to collaborate to complete the investigation.
5. ~~Information obtained by the attorney general or designee may be shared with a person that initiated the action if the attorney general or designee determine it is necessary as part of any investigation under this chapter and the person agrees to comply with the confidentiality provisions provided in subsection 4, and unless otherwise provided by state or federal law.~~
- 6.4. Disclosure pursuant to this section is not a violation of section 12.1-13-01.
5. An active investigation record of the Medicaid fraud control unit is an exempt record unless the investigation is closed and not referred for further investigation or adjudication.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 445

### SENATE BILL NO. 2103

(Human Services Committee)

(At the request of the Department of Health and Human Services)

AN ACT to amend and reenact section 50-25.1-02, subsection 5 of section 50-25.1-05, and sections 50-25.1-05.2, 50-25.1-05.5, 50-25.1-16, 50-25.1-17, 50-25.1-18, 50-25.1-20, and 50-25.1-21 of the North Dakota Century Code, relating to child abuse and neglect, the child abuse information index, disclosure of records for child protection purposes, prenatal exposure to controlled substances and alcohol, and alternative response assessments.

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

**SECTION 1. AMENDMENT.** Section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **50-25.1-02. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "A person responsible for the child's welfare" means an individual who has responsibility for the care or supervision of a child and who is the child's parent, an adult family member of the child, any member of the child's household, the child's guardian, or the child's foster parent; or an employee of, or any person providing care for the child in, a child care setting. For the purpose of institutional child abuse or neglect, "A person responsible for the child's welfare" means an institution that has responsibility for the care or supervision of a child.
2. ~~"Abuse of alcohol", "alcohol abuse", or "abused alcohol" means alcohol use disorder as defined in the current edition of the "Diagnostic and Statistical Manual of Mental Disorders" published by the American psychiatric association or a maladaptive use of alcohol with negative medical, sociological, occupational, or familial effects.~~
3. "Abused child" means an individual under the age of eighteen years who is suffering from abuse as defined in section 14-09-22 caused by a person responsible for the child's welfare, and includes a sexually abused child who is suffering from or was subjected to any act in violation of sections 12.1-20-01 through 12.1-20-07, sections 12.1-20-11 through 12.1-20-12.3, or chapter 12.1-27.2, ~~by any individual, including a juvenile.~~
3. "Alcohol misuse" means a pattern of drinking that results in harm to one's health, interpersonal relationships, or ability to work.
4. "Alternative response assessment" means a child protection response involving substance exposed ~~newborns~~infants which is designed to:

- a. Provide referral services to and monitor support services for a person responsible for the child's welfare and the substance exposed newborn infant; and
  - b. Develop a plan of safe care for the substance exposed newborn infant.
5. "Authorized agent" means the human service zone, unless another entity is designated by the department.
6. "Child abuse information index" means a categorized registry of subjects of reports confirmed or confirmed with unknown subjects for child abuse, neglect, or death resulting from abuse or neglect which are filed pursuant to section 50-25.1-05.2.
7. "Child fatality review panel" means a multidisciplinary team consisting of a representative of the department and, if possible, a forensic pathologist, a physician, a representative of the department of health and human services injury prevention, a representative of the attorney general, a representative of the superintendent of public instruction, a representative of the department of corrections and rehabilitation, a peace officer licensed in the state, a mental health professional, a representative of emergency medical services, a medical services representative from a federally recognized Indian tribe in this state, one or more representatives of the lay community, and a designated tribal representative, as an ad hoc member, acting for each federally recognized Indian tribe in this state. A team member, at the time of selection and while serving on the panel, must be a staff member of the public or private agency the member represents or shall serve without remuneration. The child fatality review panel may not be composed of fewer than three individuals.
- 7-8. "Child in need of services" means a child who in any of the following instances is in need of treatment or rehabilitation:
- a. Is habitually and without justification truant from school or absent from school without an authorized excuse for more than five days during a school year;
  - b. Is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian, or other custodian including runaway and is ungovernable or who is willfully in a situation that is dangerous or injurious to the health, safety, or morals of the child or others;
  - c. Except for an offense committed by a minor who is fourteen years of age or older under subsection 2 of section 12.1-31-03 or an equivalent local ordinance or resolution, has committed an offense applicable only to a child; or
  - d. Is under fourteen years of age and has purchased, possessed, smoked, or used tobacco, a tobacco-related product, an electronic smoking device, or an alternative nicotine product in violation of subsection 2 of section 12.1-31-03. As used in this subdivision, "electronic smoking device" and "alternative nicotine product" have the same meaning as in section 12.1-31-03.
- 8-9. "Child protection assessment" means a factfinding process designed to provide information that enables a determination of whether a child meets the

definition of an abused or neglected child, including instances that may not identify a specific person responsible for the child's welfare which is responsible for the abuse or neglect.

- 9-10. "Children's advocacy center" means a full or associate member of the national children's alliance which assists in the coordination of the investigation in response to allegations of child abuse by providing a dedicated child-friendly location at which to conduct forensic interviews, forensic medical examinations, and other appropriate services and which promotes a comprehensive multidisciplinary team response to allegations of child abuse. The team response may include forensic interviews, forensic medical examinations, mental health and related support services, advocacy, and case review.
- 40-11. "Citizen review committee" means a committee appointed by the department to review the department's provision of child welfare services.
- 44-12. "Confirmed" means that upon completion of a child protection assessment, the department determines, based upon a preponderance of the evidence, that a child meets the definition of an abused or neglected child, and the department confirms the identity of a specific person responsible for the child's welfare which is responsible for the abuse or neglect.
- 42-13. "Confirmed with unknown subject" means that upon completion of a child protection assessment, the department determines, based upon a preponderance of the evidence, that a child meets the definition of an abused or neglected child, but the evidence does not confirm the identity of a specific person responsible for the child's welfare which is responsible for the abuse or neglect.
- 43-14. "Department" means the department of health and human services.
- 44-15. "Family services assessment" means a child protection services response to reports of suspected child abuse or neglect in which the child is determined to be at low risk and safety concerns for the child are not evident according to guidelines developed by the department.
- 45-16. "Impending danger" means a foreseeable state of danger in which a behavior, attitude, motive, emotion, or situation can be reasonably anticipated to have severe effects on a child according to criteria developed by the department.
- 46-17. "Indicated" means that upon completion of an assessment of a report of institutional child abuse or neglect, the department determines based upon a preponderance of the evidence, that a child meets the definition of an abused or neglected child.
- 47-18. "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect when the institution responsible for the child's welfare is a public or private school, a residential facility or setting either licensed, certified, or approved by the department, or a residential facility or setting that receives funding from the department. For purposes of this subsection, residential facilities and settings excludes correctional, medical, home- and community-based residential rehabilitation, and educational boarding care settings.

- 18-19. "Near death" means an act that, as certified by a physician, places a child in serious or critical condition.
- 19-20. "Neglected child" means a child who, due to the action or inaction of a person responsible for the child's welfare:
- a. Is without proper care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and is not due primarily to the lack of financial means of a person responsible for the child's welfare;
  - b. Has been placed for care or adoption in violation of law;
  - c. Has been abandoned;
  - d. Is without proper care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of a person responsible for the child's welfare, and that such lack of care is not due to a willful act of commission or act of omission, and care is requested by a person responsible for the child's welfare;
  - e. Is in need of treatment and a person responsible for the child's welfare has refused to participate in treatment as ordered by the juvenile court;
  - f. Was subject to prenatal exposure to ~~chronic or severe use of alcohol~~ misuse or any controlled substance as defined in section 19-03.1-01 in a manner not lawfully prescribed by a practitioner;
  - g. Is present in an environment subjecting the child to exposure of a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2, except as used in this subsection, controlled substance includes any amount of marijuana; or
  - h. Is a victim of human trafficking as defined in title 12.1.
- 20-21. "Prenatal exposure to a controlled substance" means use of a controlled substance as defined in chapter 19-03.1 by a pregnant woman for a nonmedical purpose during pregnancy as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance.
- 24-22. "Protective services" includes services performed after an assessment of a report of child abuse or neglect has been conducted, such as social assessment, service planning, implementation of service plans, treatment services, referral services, coordination with referral sources, progress assessment, monitoring service delivery, and direct services.
- 22-23. "State child protection team" means a multidisciplinary team consisting of a representative of the department, a representative of the attorney general, a representative of law enforcement, a representative of the superintendent of public instruction, a parent with lived experience, one or more representatives of the lay community, and, as an ad hoc member, the designee of the chief

executive official of any institution named in a report of institutional abuse or neglect. All team members, at the time of their selection and thereafter, must be staff members of the public or private agency they represent or shall serve without remuneration. An attorney member of the child protection team may not be appointed to represent the child or the parents at any subsequent court proceeding nor may the child protection team be composed of fewer than three individuals. A quorum of the state child protection team consists of a minimum of one member from the department and two other state child protection team members.

23-24. "~~Substance exposed newborn infant~~" means an infant younger than ~~twenty-eight days~~twelve months of age at the time of the initial report of child abuse or neglect and who is identified as being affected by substance ~~abuse~~use or withdrawal symptoms or by a fetal alcohol spectrum disorder.

24-25. "Substance use disorder" means a substance-related or addictive disorder identified in the "Diagnostic and Statistical Manual of Mental Disorders", American psychiatric association, fifth edition, text revision (2013), or a future edition adapted by the department.

26. "Unable to determine" means insufficient evidence is available to enable a determination whether a child meets the definition of an abused or neglected child.

25-27. "Unconfirmed" means that upon completion of a child protection assessment, the department has determined, based upon a preponderance of the evidence, that a child does not meet the definition of an abused or neglected child.

**SECTION 2. AMENDMENT.** Subsection 5 of section 50-25.1-05 of the North Dakota Century Code is amended and reenacted as follows:

5. Except as prohibited under title 42, Code of Federal Regulations, part 2, or title 34, Code of Federal Regulations, part 99, a medical, dental, or mental health professional, hospital, medical or mental health facility, ~~or~~ health care clinic, or a public or private school shall disclose to the department or the authorized agent, upon request, the records of a patient ~~or~~ client ~~which are relevant to a child protection assessment of reported child abuse or neglect or to a confirmed decision, or student.~~ The department, or the authorized agent, shall limit the request for records to the minimum amount of records necessary to enable a determination to be made or to support a determination of whether child abuse or neglect is confirmed, confirmed with unknown subject, or unable to determine to provide for the protection and treatment of an abused or neglected child.

**SECTION 3. AMENDMENT.** Section 50-25.1-05.2 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-05.2. Report to the court - Entry of report in the child abuse information index.**

1. Upon confirmation that a child meets the definition of an abused or neglected child, the department promptly shall make a written report of the decision to the juvenile court having jurisdiction in the matter.

2. The department promptly shall file a report of a decision that a child meets the definition of an abused or neglected child under this section in the child abuse information index after the time to appeal the confirmed or confirmed with unknown subject decision has expired.
3. The department may not file a report of a decision that a child meets the definition of neglected child in the child abuse information index for a decision exclusively based on educational neglect.

**SECTION 4. AMENDMENT.** Section 50-25.1-05.5 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-05.5. Child abuse information index - Establishment.**

The division of children and family services or other division as determined appropriate by the department shall maintain a child abuse information index of all reports confirmed or confirmed with unknown subjects for child abuse, neglect, or death resulting from abuse or neglect which are filed pursuant to section 50-25.1-05.2. Reports must remain on the child abuse information index for a period no greater than twenty-five years following the determination. The department shall adopt rules for child abuse information index retention schedules and expungement procedures from those confirmed subjects of child abuse, neglect, or death resulting from abuse or neglect.

**SECTION 5. AMENDMENT.** Section 50-25.1-16 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-16. Prenatal exposure to controlled substances - Reporting requirements.**

1. An individual required to report under section 50-25.1-03 who has knowledge of or reasonable cause to suspect that a woman is pregnant and has used a controlled substance for a nonmedical purpose during the pregnancy shall report the circumstances to the department or authorized agent if the knowledge or suspicion is derived from information received by that individual in that individual's official or professional capacity.
2. Any individual may make a voluntary report if the individual has knowledge of or reasonable cause to suspect that a woman is pregnant and has used a controlled substance for a nonmedical purpose during the pregnancy.
3. If a report alleges a pregnant woman's use of a controlled substance for a nonmedical purpose, the department or authorized agent immediately shall initiate an appropriate assessment ~~and offer services indicated under the circumstances. Services offered may that~~ must include a referral for an addiction assessment, a referral for of the presence of a substance use disorder with expectation to follow any treatment if recommended recommendations, or and a referral for prenatal care. The department or authorized agent may also take any appropriate action under chapter 25-03.1.
4. A report and assessment under this section is not required if the pregnant woman voluntarily enters treatment in a licensed treatment program. If the pregnant woman does not complete voluntary treatment, continues to use controlled substances for a nonmedical purpose, or fails to follow treatment recommendations, an individual required to report under section 50-25.1-03

who has knowledge of the failure to complete voluntary treatment, continued use of controlled substance for nonmedical purpose, or failure to follow treatment recommendations shall make a report as required by this section.

5. A report under this section must be made as described in section 50-25.1-04 and must be sufficient to identify the woman, the nature and extent of use, if known, and the name and address of the individual making the report.

**SECTION 6. AMENDMENT.** Section 50-25.1-17 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-17. Toxicology testing - Requirements.**

1. If the woman has obstetrical complications that are a medical indication of possible use of a controlled substance for a nonmedical purpose or alcohol misuse, upon the consent of the pregnant woman, or without consent if a specimen is otherwise available, a physician shall administer a toxicology test to a pregnant woman under the physician's care or to a woman under the physician's care within eight hours after delivery to determine whether there is evidence that she has ingested a controlled substance or alcohol. If the test results are positive, the physician shall report the results under section 50-25.1-03.1. A negative test result or the pregnant woman's refusal to consent to a test does not eliminate the obligation to report under section 50-25.1-03 if other evidence gives the physician reason to believe the patient has used a controlled substance for a nonmedical purpose or has engaged in alcohol misuse.
2. If a physician has reason to believe based on a medical assessment of the mother or the infant that the mother used a controlled substance for a nonmedical purpose or engaged in alcohol misuse during the pregnancy, the physician shall administer, without the consent of the child's parents or guardian, to the newborn infant born under the physician's care a toxicology test to determine whether there is evidence of prenatal exposure to a controlled substance or alcohol. If the test results are positive, the physician shall report the results as neglect under section 50-25.1-03. A negative test result does not eliminate the obligation to report under section 50-25.1-03 if other medical evidence of prenatal exposure to a controlled substance or alcohol misuse is present.
3. A physician or any other medical personnel administering a toxicology test to determine the presence of a controlled substance or alcohol in a pregnant woman, in a woman within eight hours after delivery, or in a child at birth or during the first month of life is immune from civil or criminal liability arising from administration of the test if the physician ordering the test believes in good faith that the test is required under this section and the test is administered in accordance with an established protocol and reasonable medical practice. A physician or any other medical personnel who determines in good faith not to administer a toxicology test under this section is immune from liability for not administering the test.

**SECTION 7. AMENDMENT.** Section 50-25.1-18 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-18. Prenatal exposure to alcohol ~~abuse~~ misuse - Reporting requirements.**

1. An individual required to report under section 50-25.1-03 who has knowledge of or reasonable cause to suspect that a woman is pregnant and has ~~abused~~engaged in alcohol misuse after the woman knows of the pregnancy ~~may~~shall:
  - a. Arrange for an ~~addiction~~ assessment for the presence of a substance use disorder conducted by a licensed treatment program and confirm that the recommendations indicated by the assessment are followed; or
  - b. Immediately report the circumstances to the department or authorized agent if the knowledge or suspicion is derived from information received by that individual in that individual's official or professional capacity.
2. An individual may make a voluntary report if the individual has knowledge of or reasonable cause to suspect that a woman is pregnant and has ~~abused~~engaged in alcohol misuse during the pregnancy.
3. If the woman is referred for an ~~addiction~~substance use disorder assessment under subdivision a of subsection 1 and fails to obtain an assessment, continues to engage in alcohol misuse or refuses to comply with the recommendations of the assessment, an individual required to report under section 50-25.1-03 who has knowledge of the failure to obtain the assessment, continued alcohol misuse, or refusal to comply with recommendations of the assessment shall make a report to the department or authorized agent.
4. If a report alleges a pregnant woman has ~~abused~~engaged in alcohol misuse, the department or authorized agent shall immediately initiate an appropriate assessment and ~~offer services indicated under the circumstances. Services offered may~~ that must include a referral for an addiction assessment, ~~a referral for~~ the presence of a substance use disorder with expectation to follow any treatment, if recommended recommendations, or a referral for prenatal care. The department or authorized agent may also take any appropriate action under chapter 25-03.1.
5. A report and assessment under this section is not required if the pregnant woman voluntarily enters treatment in a licensed treatment program. If the pregnant woman does not complete voluntary treatment, continues to engage in alcohol misuse, or fails to follow treatment recommendations, an individual required to report under section 50-25.1-03 who has knowledge of the failure to complete voluntary treatment, continued alcohol misuse, or failure to follow treatment recommendations shall make a report as required by this section.
6. A report under this section must be made as described in section 50-25.1-04 and must be sufficient to identify the woman, the ~~nature and extent of the abuse~~current use of alcohol, any ~~health risks~~suspected symptoms and problems associated with the ~~abuse of alcohol~~ substance use disorder, and the name and address of the individual making the report.

**SECTION 8. AMENDMENT.** Section 50-25.1-20 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-20. Alternative response assessment - Compliance.**

If an alternative response assessment is initiated as a result of a report of child abuse or neglect, a decision that a child is confirmed abused or neglected may not be

made if the person responsible for the child's welfare complies with the resulting referred services and plan of safe care for the substance exposed ~~newborn~~infant. The department or authorized agent shall determine whether a person responsible for the child's welfare has complied with the referred services and plan of safe care for the substance exposed ~~newborn~~infant. If the department or authorized agent determines a person responsible for the child's welfare has not complied with the referred services and plan of safe care for the substance exposed ~~newborn~~infant, an assessment of the initial report of child abuse or neglect may be completed.

**SECTION 9. AMENDMENT.** Section 50-25.1-21 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-21. Alternative response assessment - Services.**

1. In response to an alternative response assessment, the department:
  - a. Shall provide referral services to, and monitor support services for, the person responsible for the child's welfare, the substance exposed ~~newborn~~infant, and other children under the same care as may be necessary for their well-being and safety;
  - b. Shall develop a plan of safe care for the substance exposed ~~newborn~~infant; and
  - c. May take any appropriate action under chapter 25-03.1.
2. The department may discharge the powers and duties provided under this section through an authorized agent.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 446

### HOUSE BILL NO. 1540

(Representatives O'Brien, Lefor, Mitskog, Nelson, Stemen, Vigesaa, Weisz)  
(Senators Hogan, Kreun, Lee)  
(Approved by the Delayed Bills Committee)

AN ACT to amend and reenact sections 50-33-02 and 50-33-07 of the North Dakota Century Code, relating to early childhood services and child care assistance; to provide for a legislative management report; to provide an appropriation; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 50-33-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-33-02. 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 human service zone 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 human service zone. 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 human service zone, 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 thirty days on child care assistance applications whenever possible. The human service zone 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 to be adjusted annually based on information from a market study and a cost study, and to establish and enforce standards against program fraud and abuse.

<sup>235</sup> **SECTION 2. AMENDMENT.** Section 50-33-07 of the North Dakota Century Code is amended and reenacted as follows:

**50-33-07. 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. The sliding fee schedule established by the department may not charge a fee to a family whose income does not exceed thirty percent of the state median income for a family of the same size.
3. 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.

<sup>236</sup> **SECTION 3. AMENDMENT.** Section 50-33-07 of the North Dakota Century Code is amended and reenacted as follows:

**50-33-07. 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~~seventy-five percent of the state median income for a family of the same size.
2. The sliding fee schedule established by the department may not charge a fee to a family whose income does not exceed thirty percent of the state median income for a family of the same size.
3. 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.

**SECTION 4. LEGISLATIVE MANAGEMENT REPORT - EARLY CHILDHOOD PROGRAMS.** During the 2023-24 interim, the department of health and human services shall provide reports to the legislative management regarding the status of early childhood programs managed by the department.

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<sup>235</sup> Section 50-33-07 was also amended by section 3 of House Bill No. 1540, chapter 446.

<sup>236</sup> Section 50-33-07 was also amended by section 2 of House Bill No. 1540, chapter 446.

**SECTION 5. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES - CHILD CARE FOR THE WORKPLACE - ONE-TIME FUNDING.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$62,600,000, or so much of the sum as may be necessary, to the department of health and human services for the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

1. The sum of \$22,000,000 for the purpose of investing in the child care assistance program to serve more working families;
2. The sum of \$15,000,000 for the purpose of enhanced child care assistance program payments for infant and toddler care;
3. The sum of \$3,000,000, which is considered a one-time funding item, for the purpose of quality tiers in the child care assistance program;
4. The sum of \$2,300,000 for the purpose of waiving a fee to a family whose income does not exceed thirty percent of the state median income for a family of the same size;
5. The sum of \$500,000 for the purpose of providing child care assistance program application assistance and outreach;
6. The sum of \$5,000,000, which is considered a one-time funding item, for the purpose of employer-led child care cost-share program;
7. The sum of \$7,000,000, which is considered a one-time funding item, for the purpose of grants and shared services;
8. The sum of \$1,800,000 for the purpose of partnerships care during nontraditional hours;
9. The sum of \$2,000,000 for the purpose of stipends for worker training;
10. The sum of \$3,000,000, which is considered a one-time funding item, for the purpose of quality infrastructure for providers; and
11. The sum of \$1,000,000, which is considered a one-time funding item, for the purpose of streamlining background checks project.

**SECTION 6. APPROPRIATION - OFFICE OF MANAGEMENT AND BUDGET - STATE EMPLOYEE CHILD CARE BENEFITS.** 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 office of management and budget for the purpose of state employee child care benefits, for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 7. EFFECTIVE DATE.** Section 3 of this Act becomes effective July 1, 2025.

Approved April 28, 2023

Filed April 29, 2023

# SALES AND EXCHANGES

## CHAPTER 447

### HOUSE BILL NO. 1191

(Representatives Louser, Kasper, Motschenbacher, Ostlie, D. Ruby)  
(Senators Larsen, Paulson, Vedaa)

AN ACT to amend and reenact subsection 2 of section 12-60-24 and sections 49-07-01.1, 51-05.1-01, 51-05.1-01.2, 51-05.1-04.1, and 51-05.1-05 of the North Dakota Century Code, relating to criminal history record checks of licenses, the registration of auctioneers, and cross-references; to repeal sections 51-05.1-01.1, 51-05.1-02, 51-05.1-02.1, and 51-05.1-03 of the North Dakota Century Code, relating to auctioneers' and clerks' licenses; and to provide an effective date.

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

<sup>237</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

2. The bureau of criminal investigation shall provide to each agency, official, or entity listed in this subsection who has requested a statewide and nationwide criminal history record check, the response of the federal bureau of investigation and any statewide criminal history record information that may lawfully be made available under this chapter:
  - a. The governing body of a city or a county, by ordinance or resolution, for a final applicant for a specified occupation with the city or county.
  - b. The agriculture commissioner for each applicant for a license to grow or process hemp under section 4.1-18.1-02.
  - c. The education standards and practices board for initial, re-entry, and reciprocal teacher licenses under sections 15.1-13-14 and 15.1-13-20 and school guidance and counseling services under section 15.1-13-23.
  - d. The North Dakota board of medicine for licenses or disciplinary investigations under section 43-17-07.1, except that criminal history record checks need not be made unless required by the board.
  - e. The private investigative and security board for licenses or registrations under section 43-30-06.
  - f. The department of health and human services for foster care licenses, approvals, and identified relatives under chapter 50-11, appointments of

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<sup>237</sup> Section 12-60-24 was also amended by section 1 of Senate Bill No. 2051, chapter 274, section 1 of Senate Bill No. 2076, chapter 120, and section 1 of Senate Bill No. 2102, chapter 214.

legal guardians under chapter 50-11.3, and petitions for adoptions under chapter 50-12, except that the criminal history record investigation must be conducted in accordance with those chapters. A criminal history record investigation completed under chapter 50-11, 50-11.3, or 50-12 may be used to satisfy the requirements of a criminal history record investigation under either of the other two chapters.

- g. The department of health and human services for criminal history record checks authorized under section 50-06-01.9.
- h. The chief information officer of the information technology department for certain individuals under section 54-59-20.
- i. A public peace officer training school that has been approved by the peace officer standards and training board for enrollees in the school. The school may only disclose the criminal history record information as authorized by law. The school shall pay the costs for securing the fingerprints, any criminal history record information made available under this chapter, and for the nationwide criminal history record check. This subdivision does not apply to the highway patrol law enforcement training center and enrollees who have a limited license under section 12-63-09.
- j. The North Dakota public employees retirement board for individuals first employed by the public employees retirement board after July 31, 2005, who have unescorted physical access to the office or any security-sensitive area of the office as designated by the executive director.
- k. The executive director of the retirement and investment office for individuals first employed by the retirement and investment office after July 31, 2005, who have unescorted physical access to the office or any security-sensitive area of the office as designated by the executive director.
- l. The Bank of North Dakota for a final applicant for a specified occupation with the Bank as designated by the president.
- m. Job service North Dakota for all employees, final applicants for employment with job service, and contractors with access to federal tax information.
- n. The department of health and human services for a final applicant for a job opening or a current employee with the department as designated by the state health officer; an individual being investigated by the department; or, when requested by the department, an applicant for registration as a designated caregiver or a compassion center agent under chapter 19-24.1.
- o. The state board of nursing for applicants, licensees, registrants, or disciplinary investigations under chapter 43-12.1, except that criminal history record checks need not be made unless required by the board.
- p. The state board of pharmacy for applicants or disciplinary investigations under chapter 43-15 and registrations, or revocation or suspension of

- registrations, under chapter 19-03.1, except that criminal history record checks need not be made unless required by the board.
- q. The state real estate commission for applicants, licensees, or investigations under chapter 43-23, except that criminal history record checks need not be made unless required by the commission.
  - r. The North Dakota board of social work examiners for applicants for initial licensure or licensees under chapter 43-41, except that criminal history record checks for licensees need not be made unless required by the board.
  - s. All agencies, departments, bureaus, boards, commissions, or institutions of the state, including the North Dakota university system, for all employees or final applicants for employment as a security guard or to otherwise provide security.
  - t. The office of management and budget for each individual who has access to personal information as designated by the director.
  - u. The department of corrections and rehabilitation for all agents and employees and a final applicant for employment designated by the director and for each agent, employee, or a final applicant for employment of a privately operated entity providing contract correctional services for the department who exercises direct authority over juveniles, inmates, probationers, or parolees.
  - v. A city, county, or combination of cities or counties that operates a correctional facility subject to chapter 12-44.1, for each agent and employee and a final applicant for employment of the correctional facility who has direct contact with or exercises direct authority over any juvenile or inmate of the correctional facility, and for each agent, employee, or a final applicant for employment of a privately operated entity providing contract correctional services for the correctional facility who exercises direct authority over juveniles, inmates, probationers, or parolees.
  - w. The North Dakota university system for a final applicant for or employee in a specified position in the university system or a university system institution or for each student applying for or admitted to a specified program of study, as designated by the chancellor.
  - x.
    - (1) The board of a school district, for employees designated by the board, provided the board is responsible for paying the costs associated with obtaining a criminal history record check;
    - (2) The board of a multidistrict special education unit, for employees designated by the board, provided the board is responsible for paying the costs associated with obtaining a criminal history record check;
    - (3) The board of an area career and technology center, for employees designated by the board, provided the board is responsible for paying the costs associated with obtaining a criminal history record check;
    - (4) The board of a regional education association, for employees designated by the board, provided the board is responsible for paying

- the costs associated with obtaining a criminal history record check;  
and
- (5) The superintendent of public instruction in the case of a nonpublic school or a state school with a superintendent appointed by or reporting to the superintendent of public instruction, for employees designated by the nonpublic or state school, provided the nonpublic or state school is responsible for paying the costs associated with obtaining a criminal history record check.
- y. (1) The board of a school district, for a final applicant seeking employment with the district or otherwise providing services to the district, if that individual has unsupervised contact with students, provided the board is responsible for paying the costs associated with obtaining a criminal history record check;
- (2) The board of a multidistrict special education unit, for a final applicant seeking employment with the unit or otherwise providing services to the unit, if that individual has unsupervised contact with students, provided the board is responsible for paying the costs associated with obtaining a criminal history record check;
- (3) The board of an area career and technology center, for a final applicant seeking employment with the center or otherwise providing services to the center, if that individual has unsupervised contact with students, provided the board is responsible for paying the costs associated with obtaining a criminal history record check;
- (4) The board of a regional education association, for a final applicant seeking employment with the association or otherwise providing services to the association if that individual has unsupervised contact with students, provided the board is responsible for paying the costs associated with obtaining a criminal history record check; and
- (5) The superintendent of public instruction in the case of a nonpublic school or a state school with a superintendent appointed by or reporting to the superintendent of public instruction, for a final applicant seeking employment with the school or otherwise providing services to the school, if that individual has unsupervised contact with students, provided the board is responsible for paying the costs associated with obtaining a criminal history record check.
- (6) For purposes of this subdivision, "unsupervised contact" with students means being in proximity to one or more students, on school grounds or at school functions, outside the presence of an individual who has been subject to a criminal history record check.
- z. The racing commission for applicants for licenses under chapter 53-06.2, except that criminal history record checks need not be made unless required by the commission.
- aa. A district court for a petition to change a name under chapter 32-28.
- bb. The state board of pharmacy for a wholesale drug distributor seeking licensure under chapter 43-15.3.

- cc. The board of dental examiners for investigations of applicants or dentists under section 43-28-11.2, except that criminal history record checks need not be made unless required by the board.
- dd. The department of financial institutions for each applicant for a specified occupation with the department as specified by the commissioner and principal owners and managing officers of applicants for a license from the department of financial institutions.
- ee. The office of tax commissioner for all employees, final applicants for employment with the tax commissioner, and contractors with access to federal tax information.
- ff. 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.
- gg. 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.
- hh. The state board of chiropractic examiners for applicants, licensees, certificates, or investigations under chapter 43-06, except that criminal history record checks need not be made unless required by the board.
  - ii. Workforce safety and insurance for a final applicant for a specified occupation with workforce safety and insurance as designated by the director, or for contractors who may have access to confidential information as designated by the director.
- jj. The board of counselor examiners for applicants for licensure or licensees under chapter 43-47, except that criminal history record checks for licensees need not be made unless required by the board.
- kk. The state board of respiratory care for applicants, licensees, or investigations under chapter 43-42, except that criminal history record checks need not be made unless required by the board.
  - ll. The North Dakota real estate appraiser qualifications and ethics board for applicants for permits or registration or permittees, registrants, owners, or controlling persons under chapters 43-23.3 and 43-23.5, except that criminal history record checks for permittees, registrants, owners, or controlling persons need not be made unless required by the board.
- mm. The insurance department for criminal history record checks authorized under chapters 26.1-26 and 26.1-26.8.
- nn. The office of the adjutant general for employees and volunteers working with the recruiting and retention, sexual assault, and youth programs.
- oo. The parks and recreation department for volunteers and final applicants for employment, as determined by the director of the parks and recreation department.

- pp. The North Dakota medical imaging and radiation therapy board of examiners for licensure and licensees under chapter 43-62, except that criminal history record checks for licensees need not be made unless required by the board.
- qq. The game and fish department for volunteers and final applicants for employment, as determined by the director of the game and fish department.
- rr. The North Dakota board of massage for applicants, licensees, or investigations under chapter 43-25.
- ss. The North Dakota board of physical therapy for physical therapist and physical therapist assistant applicants and for licensees under investigation, except that criminal history record checks need not be made unless required by the board.
- tt. The department of commerce for volunteers and employees providing services through eligible organizations, as determined by the commissioner of commerce.
- uu. The state court administrator for a guardian ad litem who provides direct services to youth.
- vv. The department of environmental quality for a final applicant for a job opening or a current employee with the department; an individual being investigated by the department; or, when requested by the department, an applicant for a radioactive materials license under chapter 23.1-03 or a solid waste permit under chapter 23.1-08.
- ww. The housing finance agency for criminal history record checks authorized under section 54-17-07.13.
- xx. The office of state treasurer for each individual who has access to federal tax information.
- ~~yy. The public service commission for initial applicant licenses under chapter 51-05.1, except that criminal history record checks need not be made unless required by the public service commission.~~
- zz. The department of health and human services for a criminal history record check for a children's advocacy center as authorized under section 50-25.1-11.1.
- aaa-zz. The state historical society for volunteers and final applicants for employment, except that criminal history record checks need not be made unless requested by the society.
- bbb-aaa. The department of transportation for volunteers and final applicants for employment, as determined by the director of the department of transportation.
- eee-bbb. The commission on legal counsel for indigents for a volunteer or final applicant for employment, as determined by the director of the commission on legal counsel for indigents.

~~ddd-ccc.~~ The board of dietetic practice for applications for licensure or renewal under chapter 43-44, except that criminal history record checks need not be made unless required by the board.

~~eee-ddd.~~ The secretary of state for employees with access to personally identifying information of residents or businesses of the state or with access to elections systems that are critical infrastructure under section 44-04-24.

~~fff-eee.~~ The department of health and human services for applicants for initial licensure for emergency medical services personnel, such as emergency medical technicians, advanced emergency medical technicians, and paramedics, as required by subdivision d of subsection 3 of section 23-27.1-03.

**SECTION 2. AMENDMENT.** Section 49-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**49-07-01.1. Violation of statute, commission order, or commission rule - Assessment of civil penalty.**

Any person who violates any statute, commission order, or commission rule which applies to matters within the authority of the commission under chapters 8-08, 8-09, 8-10, ~~and 24-09, 32-25, and 51-05.1,~~ titles 60 and 64, and title 49 except for chapters 49-22, 49-22.1, and 49-23, in addition to any other penalty provided, is subject to a civil penalty of not to exceed five thousand dollars. A violation occurring under chapter 49-23, in addition to any other penalty, is subject to a civil penalty not to exceed twenty-five thousand dollars. The commission shall develop policies for the assessment of penalties under chapter 49-23 which will take into consideration the severity of damages and the conduct of the offender. The civil penalty may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.

**SECTION 3. AMENDMENT.** Section 51-05.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**51-05.1-01. Auctioneering or clerking ~~without a license prohibited~~ - Registration.**

~~No~~A person may ~~not~~ conduct a sale as an auctioneer or clerk unless ~~licensed by the public service commission~~ registered with the secretary of state.

**SECTION 4. AMENDMENT.** Section 51-05.1-01.2 of the North Dakota Century Code is amended and reenacted as follows:

**51-05.1-01.2. Exemptions.**

~~A license~~Registration under this chapter is not required for the following:

1. Sale of an estate by an executor or an administrator.
2. Sale by a sheriff or other person under court order.
3. Sale by a public official acting in an official capacity.
4. Sale of purebred or registered livestock.

~~A bond is not required for a federally insured financial institution to clerk a sale. Persons exempt from licensing or bonding under this section shall comply with all other provisions of this chapter.~~

**SECTION 5. AMENDMENT.** Section 51-05.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**51-05.1-04.1. Written contracts.**

An auctioneer may not sell the property of another at auction without a prior written contract with the seller which sets forth the terms and conditions upon which the auctioneer will sell the property. A similar contract governing the activities of the auction clerk is required between the auction clerk and the seller. ~~The licensee must~~an auctioneer and clerk shall retain a copy of each contract for at least two years after the auction. This section does not apply to consignment sales when the value of the seller's property is less than five hundred dollars or to livestock markets. The contract must contain:

1. ~~The licensee's~~an auctioneer's or clerk's name, trade or business name, ~~state license number,~~ business address, and business telephone number.
2. A general description of the property to be sold at auction, any restrictions, and a statement identifying whether ~~or not the licensee~~an auctioneer or clerk is authorized to purchase at the auction.
3. A description of the services to be provided and the consideration for the services. The description must state which party is responsible for advertising and other expenses.
4. The date or dates when the items will be sold at auction.
5. ~~A disclosure of the amount of bond that the licensee has on file with the commission and the commission's address and telephone number.~~

**SECTION 6. AMENDMENT.** Section 51-05.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**51-05.1-05. Handling of funds by clerk of auction sale.**

Every clerk of an auction sale, ~~at all times,~~ shall maintain in the clerk's name or firm name, a separate trust account designated as such in a federally insured bank or other federally insured depository in this state in which the clerk immediately shall deposit all funds not the clerk's own, including funds in which the clerk may have some future interest or claim. A federally insured depository located outside the state ~~but licensed as a clerk in this state~~ is not required to deposit funds in a depository in this state if auction sale funds are deposited in a separate trust account designated ~~as such in the licensee's~~in the clerk's depository. A clerk may not commingle the clerk's personal funds or other funds in a trust account except that a clerk may deposit and keep a sum of one thousand dollars in ~~such~~the account from the clerk's personal funds, which sum must be specifically identified and deposited to cover service charges related to the trust account. In conjunction with ~~such~~the account, the clerk shall maintain at the clerk's usual place of business books, records, and other documents so that the adequacy of ~~such~~the account may be determined at any time. ~~Trust accounts and other records must be open to inspection by the public service commission and its duly authorized agents at all times during regular business hours at the clerk's usual place of business.~~

**SECTION 7. REPEAL.** Sections 51-05.1-01.1, 51-05.1-02, 51-05.1-02.1, and 51-05.1-03 of the North Dakota Century Code are repealed.

**SECTION 8. EFFECTIVE DATE.** This Act becomes effective on January 1, 2024.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 448

### HOUSE BILL NO. 1274

(Representatives Weisz, Dockter, Grueneich, Porter, M. Ruby)  
(Senators Klein, Lee)

AN ACT to create and enact two new subsections to section 51-25-02, subsections 6, 7, 8, 9, and 10 of section 51-25.1-02, and one new subsection to section 51-25.1-06 of the North Dakota Century Code, relating to assignment of escrow accounts, sell-through periods after removal of tobacco product manufacturer or brand family from directory, and placing burden on a nonparticipating manufacturer to establish an escrow deposit is not required on certain sales; to amend and reenact subsection 10 of section 51-25-01, subsection 2 of section 51-25.1-02, subsection 4 of section 51-25.1-02, section 51-25.1-05, subsection 2 of section 51-25.1-06, and section 57-36-04 of the North Dakota Century Code, relating to definition of the term "units sold" used to determine escrow to be deposited by a nonparticipating manufacturer, and the regulation of tobacco product manufacturers, distributors, and the lawful sale of cigarettes; to provide a penalty; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsection 10 of section 51-25-01 of the North Dakota Century Code is amended and reenacted as follows:

10. "Units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the state on packs or "roll-your-own" tobacco containers on which the state has authority under federal and state law to collect excise tax under chapter 57-36, notwithstanding whether the state excise tax was imposed or collected. Cigarettes exempt from state excise tax under federal law are specifically excluded from this definition. The state tax commissioner shall adopt rules as are necessary to ascertain the amount of state excise tax paid on the cigarettes of the tobacco product manufacturer for each year.

**SECTION 2.** Two new subsections to section 51-25-02 of the North Dakota Century Code are created and enacted as follows:

Notwithstanding subdivision b of subsection 2, a tobacco product manufacturer that deposits funds into escrow under subdivision a of subsection 2, or a transferee of rights therein, may make an irrevocable assignment of the tobacco manufacturer's interest in the funds to the benefit of the state. The assignment executed in accordance with this section is permanent and applies to all funds in the escrow account and which subsequently may come into the account, including funds deposited into the account before the assignment is executed, funds deposited into the account after the assignment is executed, and interest and other appreciation on the funds. The tobacco product manufacturer, the attorney general, and the financial institution that maintains the escrow account may make an amendment to the qualified escrow account agreement as necessary to

effectuate an assignment of the rights executed under this subsection or the withdrawal of funds from the escrow account under subdivision b of subsection 2. An assignment executed under this subsection must be in writing, and be signed by a duly authorized representative of the assignor and assignee and becomes effective upon delivery of the assignment to the attorney general and the financial institution at which the escrow account is maintained.

Notwithstanding subdivision b of subsection 2, escrow funds assigned to the state under subsection 3 must be withdrawn by the state on the approval of the attorney general. Funds withdrawn under this subsection must be deposited into the general fund and must be calculated on a dollar-for-dollar basis as a credit against any judgment or settlement described in subdivision b of subsection 2 which may be obtained against the tobacco product manufacturer or transferee that has assigned the funds in the escrow account to the state. This section may not be construed to relieve a tobacco product manufacturer from any past, current, or future obligation the manufacturer may have under this chapter or chapter 51-25.1.

<sup>238</sup> **SECTION 3. AMENDMENT.** Subsection 2 of section 51-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

2. The attorney general shall develop and publish on the attorney general's website, a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection 1 and all brand families listed in the certifications, except as otherwise provided in this subsection.
  - a. The attorney general may not include or retain in the directory the name or brand family of any tobacco product manufacturer that fails to provide the required certification or whose certification the attorney general determines is not in compliance with subsection 1, unless the attorney general has determined the violation has been cured.
  - b. Neither a tobacco product manufacturer nor brand family may be included or retained in the directory if the attorney general determines:
    - (1) Cigarettes of the tobacco product manufacturer are imported into the state by a distributor not licensed under chapter 57-36.
    - (2) In the case of a nonparticipating manufacturer, the manufacturer fails to provide the commissioner and attorney general, on a monthly basis, with copies of the reports identified in the Prevent All Cigarette Trafficking Act of 2009 [Pub. L. 111-54; 15 U.S.C. 375 et seq.].
    - (3) In the case of a nonparticipating manufacturer, an escrow payment required under subsection 5 of section 51-25.1-04 or subsection 2 of section 51-25-02, for any period for any brand family, whether listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement approved by the attorney general.

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<sup>238</sup> Section 51-25.1-02 was also amended by section 5 of House Bill No. 1274, chapter 448, and section 4 of House Bill No. 1274, chapter 448.

(2)(4) Any outstanding final judgment, including any interest, for a violation of chapter 51-25 has not been fully satisfied for the brand family and the tobacco product manufacturer.

- c. The attorney general shall update the directory as necessary to correct mistakes, to add or remove a tobacco product manufacturer or brand family, and to keep the directory in conformity with the requirements of this chapter.

<sup>239</sup> **SECTION 4. AMENDMENT.** Subsection 4 of section 51-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~Except as provided in subsections 8 and 10, it is unlawful for any person to sell, offer, or possess for sale in this state, cigarettes of a tobacco product manufacturer or brand family not included in the directory.~~

<sup>240</sup> **SECTION 5.** Subsections 6, 7, 8, 9, and 10 of section 51-25.1-02 of the North Dakota Century Code are created and enacted as follows:

6. Upon removal of a tobacco product manufacturer or brand family from the directory, the attorney general also shall transmit notice of the removal by electronic mail or other practicable means to each distributor that reported cigarette sales of that tobacco product manufacturer or brand family in the preceding year. No later than seven days after receiving notice of the removal, the distributor shall provide a copy of the notice to each of the distributor's customers that purchased cigarettes of the tobacco product manufacturer or brand family in the preceding year. The attorney general also shall post notice of the removal in the directory.
7. An out-of-state distributor may not sell or distribute into the state the cigarettes of the tobacco product manufacturer or brand family that has been removed from the directory until the tobacco product manufacturer or brand family is relisted in the directory.
8. An in-state distributor shall identify and set aside the cigarettes of a tobacco product manufacturer or brand family that has been removed from the directory for sale or distribution outside the borders of the state within thirty days after the date of removal from the directory of the tobacco product manufacturer or brand family. The in-state distributor shall keep for five years documentation of any cigarettes sold or distributed outside the borders of the state.
9. An in-state distributor may not purchase, or sell within the borders of this state, cigarettes of a tobacco product manufacturer or brand family that has been removed from the directory until the tobacco product manufacturer or brand family is relisted in the directory.
10. A retailer may not sell, offer, or possess for sale, for more than twenty days after the date of removal from the directory of a tobacco product manufacturer or brand family, the cigarettes of that tobacco product manufacturer or brand

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<sup>239</sup> Section 51-25.1-02 was also amended by section 5 of House Bill No. 1274, chapter 448, and section 3 of House Bill No. 1274, chapter 448.

<sup>240</sup> Section 51-25.1-02 was also amended by section 3 of House Bill No. 1274, chapter 448, and section 4 of House Bill No. 1274, chapter 448.

family. Before expiration of the twenty-day period, the retailer shall send any unsold cigarettes to the tobacco product manufacturer or a distributor outside the borders of this state. The retailer shall keep for five years documentation of any cigarettes sent outside the borders of this state.

**SECTION 6. AMENDMENT.** Section 51-25.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**51-25.1-05. Penalties - Remedies.**

1. In addition to any other civil or criminal remedy provided by law, upon a determination that a distributor has violated subsection 4, 6, 7, 8, or 9 of section 51-25.1-02 or subsection 1 or 4 of section 51-25.1-04, or any rule adopted under ~~that subsection~~those subsections, the attorney general may revoke the license of a distributor in the manner provided by section 57-36-04. Each sale or offer to sell cigarettes in violation of subsection 4 of section 51-25.1-02 constitutes a separate violation. For each violation, the attorney general may impose a civil penalty in an amount not to exceed five hundred percent of the retail value of the cigarettes sold or five thousand dollars, whichever is greater, upon a determination of violation of subsection 4 of section 51-25.1-02 or any rules adopted under that subsection.
2. Any cigarettes sold, offered for sale, or possessed for sale in this state, or imported for personal consumption in this state in violation of subsection 4 of section 51-25.1-02 are deemed contraband and are subject to seizure, by a law enforcement officer, and forfeiture as follows:
  - a. Upon the seizure of the cigarettes, and within two days thereafter, the law enforcement officer making the seizure shall deliver an inventory of the cigarettes seized to the person from whom the seizure was made, if known, and shall file a copy of the inventory with the attorney general.
  - b. Within ten days after the date of service of the inventory, the person from whom the seizure was made, or any other person claiming an interest in the cigarettes seized, may file a demand with the attorney general for a judicial determination of the issues of whether the cigarettes seized were, or lawfully are, subject to seizure and forfeiture. Within thirty days of the date of a timely demand, the attorney general shall institute an action in the district court of the county in which the seizure was made for a determination of the issues. The action must be brought by the attorney general in the name of the state. The district court shall hear the action and determine the issues of fact and law.
  - c. If a judgment of forfeiture is entered, the attorney general shall destroy the forfeited cigarettes unless the judgment is stayed pending an appeal to the supreme court.
  - d. If a demand for a judicial determination is made, and in the absence of an action commenced under this section or a stipulated settlement, the attorney general shall release the seized cigarettes to the person entitled to the cigarettes.
  - e. If a demand for judicial determination is not made, the seized cigarettes must be deemed forfeited to the state by operation of law and the cigarettes must be destroyed.

3. The attorney general may seek an injunction to restrain a threatened or actual violation of subsection 4, 7, 8, 9, or 10 of section 51-25.1-02 or ~~subsections~~subsection 1 or 4 of section 51-25.1-04 by any person and to compel the person to comply with this subsection. In an action brought under this section, the state is entitled to recover the costs of investigation, costs of the action, and reasonable attorney's fees.
4. A person may not sell, distribute, acquire, hold, own, possess, transport, import, or cause to be imported cigarettes the person knows or should know are intended for distribution or sale in the state in violation of subsection 4, 7, 8, 9, or 10 of section 51-25.1-02. A violation of this subsection is a class A misdemeanor.

**241 SECTION 7. AMENDMENT.** Subsection 2 of section 51-25.1-06 of the North Dakota Century Code is amended and reenacted as follows:

2. A license or renewal of a license to act as a distributor may not be issued to a person unless the person certifies in writing the person will comply with this chapter and chapter 57-36.

**242 SECTION 8.** A new subsection to section 51-25.1-06 of the North Dakota Century Code is created and enacted as follows:

For purposes of the definition of "units sold" in this chapter and chapter 51-25, the burden of establishing a sale of cigarettes is exempt from state excise tax under federal law, such that an escrow deposit for the sale is not required under section 51-25-02 or subsection 5 of section 51-25.1-04, is on the nonparticipating manufacturer claiming the exemption. To establish a claim a transaction involving the sale of cigarettes is exempt from state excise tax by federal law, such that an escrow deposit for the sale is not required, the nonparticipating manufacturer shall submit to the attorney general supporting information contained in a form prescribed or approved by the attorney general.

**243 SECTION 9. AMENDMENT.** Section 57-36-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-36-04. Revocation of license - Penalty.**

The attorney general may revoke the license of any dealer or distributor for failure to comply with any of the provisions of this chapter or chapter 51-25.1, or any of the rules or regulations prescribed by the tax commissioner or the attorney general. When a license has been legally revoked, no license may be issued again to the licensee for a period of one year thereafter. A person may not sell any cigarettes, cigarette papers, snuff, cigars, or tobacco after that person's license has been revoked as provided in this chapter.

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<sup>241</sup> Section 51-25.1-06 was also amended by section 8 of House Bill No. 1274, chapter 448.

<sup>242</sup> Section 51-25.1-06 was also amended by section 7 of House Bill No. 1274, chapter 448.

<sup>243</sup> Section 57-36-04 was also amended by section 3 of House Bill No. 1412, chapter 537.

**SECTION 10. EMERGENCY.** Sections 1 and 8 of this Act are declared to be an emergency measure.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 449

### SENATE BILL NO. 2299

(Senators Vedaa, Hogue, Kannianen, Paulson)  
(Representative Louser)

AN ACT to create and enact three new sections to chapter 51-35 of the North Dakota Century Code, relating to scrap metal dealer registration, catalytic converters, and catalytic converter theft; to amend and reenact sections 51-35-01, 51-35-02, 51-35-03, and 51-35-04 of the North Dakota Century Code, relating to purchases by scrap metal dealers; and to provide a penalty.

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

<sup>244</sup> **SECTION 1. AMENDMENT.** Section 51-35-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **51-35-01. Definitions.**

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

1. "Alloy" means a combination of a metal and carbon or other metals.
2. "Business records" means records of any purchase or transaction that involves the receipt of scrap metals made in the ordinary course of business and includes written receipts, books or similar records, or electronically stored records, but does not include correspondence, tax returns, or financial statements.
3. "Catalytic converter" means a motor vehicle exhaust system component attached to the motor vehicle which reduces vehicle emissions by breaking down harmful exhaust emissions.
4. "Detached used catalytic converter" means a catalytic converter previously removed from a motor vehicle, or any nonferrous part of a catalytic converter previously removed from a motor vehicle. The term does not include a catalytic converter incidentally included in a mixed load of ferrous or nonferrous scrap metal.
5. "Ferrous metals" means those metals that will attract a magnet, and includes alloys of those metals.
- ~~4-6.~~ "Law enforcement officer" or "peace officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.
- ~~5-7.~~ "Nonferrous metals" means those metals that will not normally attract a magnet, including copper, brass, aluminum, bronze, lead, zinc, platinum, and

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<sup>244</sup> Section 51-35-01 was also amended by section 6 of House Bill No. 1474, chapter 66.

~~nickel and includes; alloys of those metals; and metals contained within detached used catalytic converters.~~

~~6-8.~~ "Scrap metal" means ferrous or nonferrous metals purchased primarily for reuse or recycling, including metals combined with other materials at the time of purchase or acquisition, ~~and including; insulated and uninsulated wire and cable; and detached used catalytic converters.~~ Scrap metal does not include automobiles, automobile hulks, or any aluminum food or beverage containers.

~~7-9.~~ "Scrap metal dealer" means a person, ~~as defined in subsection 8 of section 4-01-49,~~ engaged in the business of purchasing, selling, trading, or bartering scrap metal, and includes all employees of the scrap metal dealer. A scrap metal dealer must have a fixed business premises, shall obtain a sales and use tax permit from the tax commissioner, and shall register with the attorney general as a scrap metal dealer under section 5 of this Act.

**SECTION 2. AMENDMENT.** Section 51-35-02 of the North Dakota Century Code is amended and reenacted as follows:

**51-35-02. Records of purchase, trade, barter, or transaction required.**

1. Every scrap metal dealer shall keep business records of any purchase, trade, barter, or other transaction that involves the receipt of scrap metals worth over ~~twenty-five~~ fifty dollars. The business records must include the following information:
  - a. The date, time, and place of each purchase or transaction;
  - b. A description of the scrap metal received and the weight and type of scrap metal received;
  - c. The amount paid to the person selling or delivering the scrap metal and the manner of payment, including check or electronic transfer;
  - d. The name and address of the person selling or delivering the scrap metal; and
  - e. A photocopy of a valid government-issued identification card or driver's license and which must include the seller's or deliverer's full name, photograph, date of birth, and signature.
  - f. For a detached used catalytic converter, either:
    - (1) Written evidence of ownership of the catalytic converter purchased from the person, including a bill of sale, a receipt for repair of the vehicle the catalytic converter was removed from, or the title, registration, or other ownership documentation for the vehicle from which the catalytic converter was removed; or
    - (2) A signed statement of ownership by the seller.
2. Every scrap metal dealer shall keep the business records required under this section at the business premises of the scrap metal dealer or other reasonably available location within this state for seven years after the date of each purchase or transaction for which business records are required under this section.

3. A scrap metal dealer may not pay cash for scrap metal purchases or transactions over one thousand dollars or for any purchase or transaction over one hundred dollars for a detached used catalytic converter, but may only pay by check or electronic transfer.
4. Each scrap metal dealer's premises must be kept open during regular business hours for inspection by a law enforcement officer and each scrap metal dealer's business records and business inventory must be made available for inspection by a law enforcement officer at all times during reasonable business hours or at reasonable times if ordinary hours of business are not kept. All business records required under this section for transactions involving a detached used catalytic converter must be made available for inspection by a law enforcement officer upon request.
5. Before a law enforcement officer may conduct an inspection under this section, the law enforcement officer shall inform the scrap metal dealer that the individual is a law enforcement officer and shall inform the scrap metal dealer of the purpose of the inspection. The law enforcement officer shall comply with all reasonable and customary safety requirements of the scrap metal dealer on the business premises.
6. The scrap metal dealer may require a law enforcement officer to sign an inspection log that includes the officer's name and serial or badge number and the date, time, and purpose for the inspection.
7. The provisions of this chapter shall take precedence over and supersede any local ordinance adopted by a political subdivision that regulates scrap metal transactions.

**SECTION 3. AMENDMENT.** Section 51-35-03 of the North Dakota Century Code is amended and reenacted as follows:

**51-35-03. Exemptions.**

1. Section 51-35-02 does not apply to:
  1. a. Purchases from another scrap metal dealer who regularly conducts scrap metal business in this state.
  2. b. Purchases from government agencies.
  3. c. Purchases of scrap metal, excluding detached used catalytic converters, from persons regularly engaged in the business of manufacturing metals or regularly engaged in the business of generating and selling metals at retail—or wholesale, including scrap processing or manufacturing that produces byproducts for scrap.
  4. d. Purchases from a person with a business registered with the secretary of state which is regularly engaged in the business of manufacturing catalytic converters or vehicles, or regularly engaged in the business of generating detached used catalytic converters in the ordinary course of the seller's business.
  - e. Purchases of scrap metal, excluding detached used catalytic converters, from persons regularly engaged in the generation or transmission of electricity, or in telephone, telegraph, or cable communications, if the

person provides the scrap metal dealer with a bill of sale or other written evidence of ownership of the scrap metal purchased from the person.

2. Excluding a detached used catalytic converter, section 51-35-02 and section 5 of this Act do not apply to the purchase, trade, or barter of scrap metal, between an owner or agent of a residential, commercial, or agricultural property and another person, for the purpose of removing scrap metal, from the owner or agent's residential, commercial, or agricultural property. This subsection applies only to the initial transaction between the owner or agent and the person removing the scrap metal, and does not apply to a subsequent sale of the same scrap metal.

**SECTION 4. AMENDMENT.** Section 51-35-04 of the North Dakota Century Code is amended and reenacted as follows:

**51-35-04. Penalty.**

1. A scrap metal dealer ~~who~~that willfully fails to comply with recordkeeping under section 51-35-02 is guilty of a class B misdemeanor.
2. A scrap metal dealer ~~who~~that willfully buys, receives, possesses, or conceals stolen scrap metal, and the scrap metal is less than five hundred dollars in value is guilty of a class A misdemeanor.
3. A scrap metal dealer ~~who~~that willfully buys, receives, possesses, or conceals stolen scrap metal, and the scrap metal exceeds five hundred dollars in value or the scrap metal includes a detached used catalytic converter that is subject to the requirements of this chapter without exemption, is guilty of a class C felony.
4. A person that willfully fails to comply with section 6 of this Act is guilty of a class B misdemeanor.

**SECTION 5.** A new section to chapter 51-35 of the North Dakota Century Code is created and enacted as follows:

**Registration.**

1. A person may not act as a scrap metal dealer or represent to the public the person is a scrap metal dealer unless the person is registered under this chapter.
2. The attorney general shall issue a certificate of registration to an applicant that:
  - a. Applies as directed by the attorney general;
  - b. Presents any relevant evidence relating to the applicant's qualifications as required by the attorney general; and
  - c. Has a fixed business premises that is properly zoned according to local ordinances for the business conducted.
3. The attorney general may establish qualifications, requirements, and penalties for noncompliance with registration requirements for the holder of a certificate of registration under this chapter.

**SECTION 6.** A new section to chapter 51-35 of the North Dakota Century Code is created and enacted as follows:

**Catalytic converters.**

1. Unless the person is registered with the attorney general as a scrap metal dealer under section 5 of this Act, a person may not purchase, trade for, or pledge to buy a detached used catalytic converter, or offer or advertise to purchase, trade for, or pledge to buy a detached used catalytic converter.
2. Unless the seller is exempt under subdivision d of subsection 1 of section 51-35-03, a person wishing to sell a detached used catalytic converter shall do so in person at the fixed business premises of a scrap metal dealer registered with the attorney general.

**SECTION 7.** A new section to chapter 51-35 of the North Dakota Century Code is created and enacted as follows:

**Catalytic converter theft - Penalty.**

1. A person commits the offense of theft of a catalytic converter if the person willfully takes possession of, carries away, or exercises control over a catalytic converter with intent to deprive the rightful owner of the catalytic converter.
2. Except as provided under subsection 3, an offense under this section is a:
  - a. Class B misdemeanor if the replacement value of the catalytic converter unlawfully obtained including any repair costs is less than two hundred dollars.
  - b. Class A misdemeanor if the replacement value of the catalytic converter unlawfully obtained including any repair costs is two hundred dollars or more but less than one thousand dollars.
  - c. Class C felony if the replacement value of the catalytic converter unlawfully obtained including any repair costs is one thousand dollars or more.
3. An offense under this section is a class C felony if the offense is a third or subsequent offense, regardless of the replacement value of the catalytic converter. For purposes of this subsection, a first and second offense include a conviction, acceptance of, or other form of preliminary disposition before the sentencing on the present violation for an offense under this section.

Approved April 13, 2023

Filed April 14, 2023

## CHAPTER 450

### HOUSE BILL NO. 1228

(Representatives D. Ruby, Klemin, Louser, Prichard, Thomas, VanWinkle)  
(Senators Bekkedahl, Hogue, Klein, J. Roers, Wanzek)

AN ACT to amend and reenact sections 51-37-01, 51-37-02, and 51-37-04, relating to the use of certain marketing practices involving an agreement containing a provision for automatic renewal; and to provide for application.

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

**SECTION 1. AMENDMENT.** Section 51-37-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **51-37-01. Definitions.**

As used in this chapter:

1. "Agreement" means a written agreement between a customer and a party acting in the usual course of business in which a customer borrows, buys, leases, or obtains merchandise, personal property, real property, or services for valuable consideration.
2. "Automatic renewal" means a plan or arrangement in which a paid subscription or purchasing agreement is automatically renewed for a period of more than one month at the end of a definite period for a subsequent period.
- ~~2-3.~~ "Clear and conspicuous" means in a larger type than the surrounding text, in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size or symbols or other marks, in a manner that clearly calls attention to the language and makes the language readily apparent, readable, and understandable to the person to which the language is disclosed. In the case of an audio disclosure, "clear and conspicuous" means in a volume and cadence sufficient to be readily audible and understandable. A statement that contradicts or is inconsistent with any other information with which the statement is presented is not clear and conspicuous.

**SECTION 2. AMENDMENT.** Section 51-37-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **51-37-02. Use of automatic renewal.**

1. A person that sells or offers to sell merchandise or a service for a specified period under an agreement containing a provision for automatic renewal shall:
  - a. Present the terms of the automatic renewal offer in a clear and conspicuous manner before a subscription or purchasing agreement is fulfilled and in proximity to the offer;

- b. Provide an acknowledgment that includes the terms of the automatic renewal offer and information regarding how to cancel in a manner which is capable of being retained by the buyer; and
  - c. Provide a cost-effective, timely, and simple procedure for cancellation which must be described in the acknowledgment required by subdivision b.
2. A person that sells or offers to sell merchandise or a service for a specified period under an agreement that contains a provision for automatic renewal for a period of more than six months at the end of the time period specified in the agreement shall provide a clear and conspicuous written notice to the buyer stating the buyer may cancel the contract and avoid automatic renewal.
    - a. The written notice must be provided by:
      - (1) First-class mail;
      - (2) Electronic mail; or
      - (3) Any easily accessible form of communication, including text message or a mobile application, if the consumer specifically authorizes the person to provide notice in such form.
    - b. The written notice must include the procedure for canceling and must be given at least thirty days and not more than sixty days before the date upon which the agreement will be renewed or the expiration of the period for cancellation.
  3. If there is a material change in the terms of an agreement that contains a provision for automatic renewal, the seller shall provide the buyer with clear and conspicuous notice of the material change and provide information regarding how to cancel in a manner which is capable of being retained by the buyer.
  4. A person that sells or offers to sell merchandise or a service for a specified period under an agreement that contains a provision for automatic renewal may not make or submit any charge to a buyer's credit card, debit card, bank account, account with a third party, or other financial account, unless the person has complied with the requirements of subsection 1 and obtained the buyer's affirmative consent to the agreement containing the terms of the automatic renewal.
  5. The renewal period in a provision for automatic renewal of an agreement for sale of merchandise may not exceed twelve months.

**SECTION 3. AMENDMENT.** Section 51-37-04 of the North Dakota Century Code is amended and reenacted as follows:

**51-37-04. Remedies.**

An agreement for ~~sale of merchandise~~automatic renewal provision in violation of this chapter is unenforceable and void. If a person sends merchandise or provides a service as a result of an automatic renewal of agreement without complying with the requirements of section 51-37-02 or sends merchandise or provides a service after a buyer undertook an affirmative act to cancel or otherwise avoid charges, the

merchandise or service is considered to be an unconditional gift to the buyer who may dispose of the gift in any manner the buyer sees fit without any obligation to the person.

**SECTION 4. APPLICATION.** This Act applies to contracts entered after July 31, 2023.

Approved April 7, 2023

Filed April 10, 2023



# SOCIAL SECURITY

## CHAPTER 451

### HOUSE BILL NO. 1092

(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.

#### **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 Lots 5 & 6, Block 5, Airport Industrial Addition to the City of Minot, Ward 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. General fund proceeds must be deposited in the job service federal advanced interest repayment fund.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 452

### HOUSE BILL NO. 1093

(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.

#### **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 K, Block 1, Endres-Rydel Addition to the City of Grand Forks, Grand Forks 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.

Approved March 14, 2023

Filed March 15, 2023

# SPORTS AND AMUSEMENTS

## CHAPTER 453

### SENATE BILL NO. 2304

(Senators Klein, Hogue, Luick)  
(Representatives Karls, Kempenich, Nathe)

AN ACT to amend and reenact sections 53-06.1-01 and 53-06.1-03, subsection 3 of section 53-06.1-10.1, subsection 5 of section 53-06.1-11, and subsection 10 of section 53-06.1-15.1 of the North Dakota Century Code, relating to the definitions of alcoholic beverage establishment and manufacturer, approval for a gaming site authorization and licensure, the maximum number of gaming sites allowed, the maximum number of pull tab devices allowed at a site, gaming licenses for alcoholic beverage establishments, electronic fifty-fifty raffles, rent limits for electronic pull tab devices, and the imposition of monetary fines for violations by third-party businesses; to provide for a legislative management study; to provide an effective date; and to declare an emergency.

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

**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, gaming tax, and federal excise tax imposed under section 4401 of the Internal Revenue Code [26 U.S.C. 4401].
2. "Alcoholic beverage establishment" means an establishment licensed under chapter 5-02 where alcoholic beverages are sold, dispensed, and consumed by guests on the premises. The term does not include a liquor store, gas station, grocery store, or convenience store.
3. "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.
- ~~3-4.~~ "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.
- ~~4-5.~~ "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.

- 5-6. "Distributor" means a person that sells, markets, or distributes equipment designed for use in the conduct of games.
- 6-7. "Educational organization" means a nonprofit public or private elementary or secondary school, two-year or four-year college, or university.
- 7-8. "Electronic pull tab device" means a device, approved by the attorney general, which electronically displays pull tabs.
- 8-9. "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 20.1-04 or 20.1-08 and may not conduct a game other than a raffle under chapter 20.1-04 or 20.1-08.
- 9-10. "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.
- 40-11. "Games" means games of chance.
- 44-12. "Gross proceeds" means all cash and checks received from conducting games.
- 42-13. "Licensed organization" means an eligible organization licensed by the attorney general.
- 43-14. "Manufacturer" means, for a pull tab or bingo card, a person who designs, prints, assembles, or produces the product. For a pull tab dispensing device, electronic pull tab device operating system, bingo card marking device, or a ~~fifty-fifty~~electronic raffle system, 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 or system to operate.
- 44-15. "Net income" means gross proceeds less cash prizes, cost of merchandise prizes, and expenses to conduct the gaming activity.
- 45-16. "Net proceeds" means adjusted gross proceeds less allowable expenses and gaming tax.

- 46-17. "Permit" means a local permit or restricted event permit issued by a governing body of a city or county to a nonprofit organization or group of people domiciled in North Dakota.
- 47-18. "Person" means any person, partnership, corporation, limited liability company, association, or organization.
- 48-19. "Prize board" means a board used with pull tabs to award cash or merchandise prizes.
- 49-20. "Public safety organization" means an organization whose primary purpose is to provide firefighting, ambulance service, crime prevention, or similar emergency assistance.
- 20-21. "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.
- 24-22. "Pull tab" means a folded or banded ticket or jar ticket, a pull tab card with break-open tabs, or an electronic pull tab displaying concealed numbers or symbols or combinations of concealed numbers and symbols which are exposed by a player to determine the outcome. The terms "pull tab" and "jar ticket" are used interchangeably unless otherwise stated. A winning pull tab contains certain symbols, numbers, or combinations of symbols and numbers and may contain multiple winning symbols, numbers, or combinations of symbols and numbers which have been previously designated as winning symbols or numbers.
- 22-23. "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.
- 23-24. "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>245</sup> **SECTION 2. AMENDMENT.** Section 53-06.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-03. Permits, site authorization, and licenses - Organization requirements - Site inspection.**

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<sup>245</sup> Section 53-06.1-03 was also amended by section 1 of Senate Bill No. 2126, chapter 454, section 1 of Senate Bill No. 2154, chapter 455, and section 1 of Senate Bill No. 2281, chapter 459.

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 permits. A local permit may allow the organization to conduct only raffles, bingo, or sports pools. A restricted event permit may allow the organization 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 eight thousand dollars and total prizes of all games do not exceed forty 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. An organization that has a local permit or a restricted event permit may use the net income from the gaming activity for any purpose that does not violate this chapter or gaming rules, unless the organization is a state political party or legislative district party committee, the organization may use the net income from a raffle for a political purpose. For purposes of this subdivision, a public-spirited use includes a political purpose.
  - d. An organization that has a restricted event 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 in subdivision c, if applicable, and in section 53-06.1-11.1; and
    - (5) Shall file a report prescribed by the attorney general with the governing body and attorney general.
2. An eligible organization shall apply for a license to conduct only bingo, electronic quick shot bingo, raffles, calcuttas, pull tabs, punchboards, twenty-one, paddlewheels, poker, or sports pools by:

- a. First securing approval for a site authorization from the governing body of the city or county in which the proposed site is located. Approval, which may be granted at the discretion of the governing body, must be recorded on a site authorization form that is to accompany the license application to the attorney general for final approval. An eligible organization may request a specific site location on the site authorization form.
- (1) A governing body may:
- (a) May not require an eligible organization to donate net proceeds to the city, county, or related political subdivision or for community programs or services within the city or county as a condition for receiving a site authorization from the city or county. A governing body may;
  - (b) May not deny a site authorization solely because the eligible organization has not conducted gaming at the site;
  - (c) May not require that an eligible organization be located at a specific site as a condition of site authorization;
  - (d) May limit the type of games and the number of electronic pull tab devices or tables for the game of twenty-one per site, and the number of sites upon which a licensed organization may conduct games within the city or county. A governing body may; and
  - (e) May charge a one hundred dollar fee for a site authorization; and.
- (2) This subsection may not be construed to prohibit a governing body from:
- (a) Creating and enforcing rules that are more stringent than state law regarding charitable gaming as otherwise permitted in code; or
  - (b) Denying a site authorization for just cause, including, after consultation with the attorney general, a violation of state law or local rules.
- b. Annually applying for a license from the attorney general before July first on a form prescribed by the attorney general and remitting a one hundred fifty dollar license fee for each city or county that approves a site authorization. However, the attorney general may allow an organization that only conducts a raffle or calcutta in two or more cities or counties to annually apply for a consolidated license and remit a one hundred fifty dollar license fee for each city or county in which a site is located. An organization shall document that it qualifies as an eligible organization. If an organization amends its primary purpose as stated in its articles of incorporation or materially changes its basic character, the organization shall reapply for licensure. The attorney general may deny issuance of a license or deny renewal of a license to an eligible organization that has obtained approval of site authorization under subdivision a, if the organization or site is not in compliance with applicable laws and rules.
3. A licensed organization or organization that has a permit shall conduct games as follows:

- a. Only one licensed organization or organization that has a permit may conduct games at an authorized site on a day, except that a raffle may be conducted for a special occasion by another licensed organization or organization that has a permit when one of these conditions is met:
    - (1) When the area for the raffle is physically separated from the area where games are conducted by the regular organization.
    - (2) Upon request of the regular organization and with the approval of the alcoholic beverage establishment, the regular organization's license or permit is suspended for that specific time of day by the attorney general.
  - b. ~~Except for a temporary site authorized for fourteen or fewer consecutive days for not more than two events per quarter or a licensed organization authorized on or before January 1, 2023, to conduct gaming at more than fifteen sites, a licensed organization, including a closely related organization, may not have more than twenty-five~~fifteen sites unless ~~granted a waiver by the attorney general. If the attorney general finds that there is no other licensed organization interested in conducting gaming at a site for which a waiver is being sought, the attorney general may approve the waiver for no more than five sites.~~
  - c. Games of electronic quick shot bingo, electronic pull tabs, pull tabs, punchboards, twenty-one, paddlewheels, poker, and sports pools may be conducted only during the hours when alcoholic beverages may be dispensed according to applicable regulations of the state, county, or city. Electronic pull tabs must be conducted in a designated area where patrons must be twenty-one years of age or older to enter.
  - d. An organization may not permit a person under twenty-one years of age to directly or indirectly play pull tabs, punchboards, twenty-one, calcuttas, sports pools, paddlewheels, or poker. An organization may not permit an individual under eighteen years of age to directly or indirectly play electronic quick shot bingo. An organization may not permit an individual under eighteen years of age to directly or indirectly play bingo unless the individual is accompanied by an adult, bingo is conducted by an organization that has a permit, or the game's prize structure does not exceed that allowed for a permit.
  - e. An organization may not install more than ten electronic pull tab devices at a site.
  - f. An organization with more than fifteen licensed sites under subdivision b may not increase its number of sites beyond the number of sites licensed as of January 1, 2023.
  - g. An organization conducting gaming at an authorized site on January 1, 2023, may continue to operate gaming, including as provided under subsection 1 of section 53-06.1-06, at the authorized site regardless of whether the authorized site is an alcoholic beverage establishment as defined under section 53-06.1-01.
4. A permit, or site authorization and license, must be displayed at a site.

5. The attorney general may issue a conditional license to an eligible organization whose regularly issued license has expired or been suspended, revoked, or relinquished. The attorney general shall designate the time period for which the conditional license is valid and may impose any conditions.
6. A governing body or local law enforcement official may inspect a site's gaming equipment and examine or cause to be examined any gaming-related books and records of a licensed organization or organization that has a permit.

**SECTION 3. AMENDMENT.** Subsection 3 of section 53-06.1-10.1 of the North Dakota Century Code is amended and reenacted as follows:

3. An organization permitted to conduct raffles in this state may conduct ~~an~~ an electronic fifty-fifty raffle either by manual drawing or by using a random number generator. ~~Fifty-fifty~~ Electronic fifty-fifty raffle tickets must be sold and drawings held onsite at the location of and on the date of the event. ~~Fifty-fifty~~ Electronic fifty-fifty raffles may not be conducted online over the internet.

**SECTION 4. AMENDMENT.** Subsection 5 of section 53-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

5. For a site where bingo is not the primary game:
  - a. If twenty-one or paddlewheels is conducted, the monthly rent may not exceed two hundred dollars multiplied by the necessary number of tables based on criteria prescribed by gaming rule. For each twenty-one table with a wager greater than five dollars, an additional amount up to one hundred dollars may be added to the monthly rent. If pull tabs is also conducted involving only a jar bar, the monthly rent for pull tabs may not exceed an additional one hundred seventy-five dollars. If pull tabs is conducted involving only a dispensing device or a jar bar and dispensing device, the monthly rent for pull tabs may not exceed an additional three hundred twenty-five dollars.
  - b. If twenty-one and paddlewheels are not conducted but pull tabs is conducted involving either a jar bar or dispensing device, the monthly rent may not exceed four hundred dollars.
  - c. If pull tabs is conducted using one or more electronic pull tab devices, the monthly rent may not exceed ~~an additional~~ one hundred seventy-five dollars per machine for the first five machines in the same venue. For each additional machine in the same venue beyond five, the monthly rent may not exceed ~~an additional fifty~~ seventy-five dollars per machine up to a maximum of one thousand ~~one~~ two hundred ~~twenty-five~~ fifty dollars per month for all electronic pull tab devices in a single venue.

**SECTION 5. AMENDMENT.** Subsection 10 of section 53-06.1-15.1 of the North Dakota Century Code is amended and reenacted as follows:

10. Impose a monetary fine on a licensed organization, organization that has a permit, distributor, ~~or~~ manufacturer, or third-party business operating gaming and working as an agent of the charity for failure to comply with this chapter or any gaming rule. The monetary fine for each violation by an organization is a minimum of twenty-five dollars and may not exceed two percent of the organization's average quarterly gross proceeds, or five thousand dollars,

whichever is greater. The monetary fine for each violation by a distributor is a minimum of one hundred dollars and may not exceed five thousand dollars. The monetary fine for each violation by a manufacturer is a minimum of five hundred dollars and may not exceed two hundred fifty thousand dollars. This fine may be in addition to or in place of a license suspension or revocation.

## **SECTION 6. LEGISLATIVE MANAGEMENT STUDY - CHARITABLE GAMING.**

1. During the 2023-24 interim, the legislative management shall study statewide charitable gaming comprehensively. The study must include input from the attorney general, stakeholders from large and small charitable organizations, local political subdivisions that authorize sites, gaming equipment manufacturers and distributors, gambling addiction counselors, and other industry leaders. The study must also include:
  - a. An evaluation of the economic impact of charitable gaming on the state in urban and rural areas;
  - b. An evaluation of gambling addiction and treatment services currently available;
  - c. An evaluation of the civic benefit of charitable gaming to the communities most closely related to the gaming sites;
  - d. An evaluation of how site authorization is approved and renewed, including whether charities have equitable access to sites;
  - e. An evaluation of the gaming tax structure;
  - f. An evaluation of public support for charitable gaming;
  - g. An evaluation of statewide local restrictions placed on charitable gaming;
  - h. An evaluation of gaming expansion;
  - i. An evaluation of site locations where gaming is taking place;
  - j. An evaluation of charitable gaming proceeds and the eligible uses of gaming proceeds, including the percentage of proceeds that may be used for administration;
  - k. An evaluation of the categories of organizations that are allowed to conduct charitable gaming, including the missions of such organizations;
  - l. An evaluation of the placement of gaming activity within a gaming site, including electronic pull tab device placement;
  - m. An evaluation of the rental rate paid by organizations to alcoholic beverage establishments; and
  - n. An evaluation of the authority of the attorney general to regulate alcoholic beverage establishments.
2. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 7. EFFECTIVE DATE.** This Act becomes effective on June 30, 2023.

**SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 29, 2023

Filed May 1, 2023

## CHAPTER 454

### SENATE BILL NO. 2126

(Senators Conley, Elkin, Vedaa)  
(Representatives Grueneich, Ostlie)

AN ACT to create and enact a new subdivision to subsection 3 of section 53-06.1-03 of the North Dakota Century Code, relating to the sale of raffle boards; and to amend and reenact subsection 3 of section 53-06.1-14 of the North Dakota Century Code, relating to affixing a North Dakota gaming stamp.

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

**246 SECTION 1.** A new subdivision to subsection 3 of section 53-06.1-03 of the North Dakota Century Code is created and enacted as follows:

For a raffle board, an organization permitted to conduct raffles shall sell the numbered squares on the board for the same price and may sell squares at a site thirty days before the drawing.

**247 SECTION 2. AMENDMENT.** Subsection 3 of section 53-06.1-14 of the North Dakota Century Code is amended and reenacted as follows:

3. A licensed distributor shall affix a North Dakota gaming stamp to each deal of pull tabs, raffle board, punchboard, sports pool board, calcutta board, and series of paddlewheel ticket cards sold or otherwise provided to a licensed organization or organization that has a permit and shall purchase the stamps from the attorney general for thirty-five cents each. Ten cents of each stamp sold by the attorney general, up to thirty-six thousand dollars per biennium, must be credited to the attorney general's operating fund to defray the costs of issuing and administering the gaming stamps. If an organization hosts an event with a raffle board and only sells numbered squares on the day of event, the organization is exempt from the requirements under this subsection.

Approved April 27, 2023

Filed April 28, 2023

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<sup>246</sup> Section 53-06.1-03 was also amended by section 1 of Senate Bill No. 2154, chapter 455, section 1 of Senate Bill No. 2281, chapter 459, and section 2 of Senate Bill No. 2304, chapter 453.

<sup>247</sup> Section 53-06.1-14 was also amended by section 3 of Senate Bill No. 2281, chapter 459.

## CHAPTER 455

### SENATE BILL NO. 2154

(Senators Lee, Lemm, J. Roers)  
(Representatives Mitskog, Schauer, Schreiber-Beck)

AN ACT to amend and reenact subsection 3 of section 53-06.1-03 of the North Dakota Century Code, relating to organizations with local permits to conduct charitable gaming.

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

<sup>248</sup> **SECTION 1. AMENDMENT.** Subsection 3 of section 53-06.1-03 of the North Dakota Century Code is amended and reenacted as follows:

3. A licensed organization or organization that has a permit shall conduct games as follows:
  - a. Only one licensed organization or organization that has a permit may conduct games at an authorized site on a day, except that a raffle or a sports pool conducted under a local permit may be conducted for a special occasion by another licensed organization or organization that has a permit when one of these conditions is met:
    - (1) When the area for the raffle or sports pool is physically separated from the area where games are conducted by the regular organization.
    - (2) Upon request of the regular organization and with the approval of the alcoholic beverage establishment, the regular organization's license or permit is suspended for that specific time of day by the attorney general.
  - b. Except for a temporary site authorized for fourteen or fewer consecutive days for not more than two events per quarter, a licensed organization may not have more than twenty-five sites unless granted a waiver by the attorney general. If the attorney general finds that there is no other licensed organization interested in conducting gaming at a site for which a waiver is being sought, the attorney general may approve the waiver for no more than five sites.
  - c. Games of electronic quick shot bingo, pull tabs, punchboards, twenty-one, paddlewheels, poker, and sports pools may be conducted only during the hours when alcoholic beverages may be dispensed according to applicable regulations of the state, county, or city.
  - d. An organization may not permit a person under twenty-one years of age to directly or indirectly play pull tabs, punchboards, twenty-one, calcuttas, sports pools, paddlewheels, or poker. An organization may not permit an

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<sup>248</sup> Section 53-06.1-03 was also amended by section 1 of Senate Bill No. 2126, chapter 454, section 1 of Senate Bill No. 2281, chapter 459, and section 2 of Senate Bill No. 2304, chapter 453.

individual under eighteen years of age to directly or indirectly play electronic quick shot bingo. An organization may not permit an individual under eighteen years of age to directly or indirectly play bingo unless the individual is accompanied by an adult, bingo is conducted by an organization that has a permit, or the game's prize structure does not exceed that allowed for a permit.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 456

### SENATE BILL NO. 2336

(Senators Lee, J. Roers, Sorvaag)  
(Representatives Boschee, Roers Jones, Strinden)

AN ACT to amend and reenact section 53-06.1-11.1 of the North Dakota Century Code, relating to eligible uses of net proceeds.

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

<sup>249</sup> **SECTION 1. AMENDMENT.** Section 53-06.1-11.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **53-06.1-11.1. Restricted use of money in certain political activities - Eligible uses of net proceeds.**

1. Except as provided in subdivision c of subsection 1 of section 53-06.1-03:
  - a. A licensed organization or an organization that has a permit may not use money from any source for placing an initiated or referred measure on a ballot or for a political campaign to promote or oppose a person for public office.
  - b. Except for a use related to an organization's primary purpose, a licensed organization or organization that has a permit may not use net proceeds to influence legislation or promote or oppose referendums or initiatives.
  - c. Any funds expended by a licensed organization or an organization that has a permit to promote or oppose an initiated or referred measure that is on the ballot or for any activities of a lobbyist under section 54-05.1-02, that are not compensation or expenses paid to a lobbyist, and that are not required to be reported under section 54-05.1-03 must be reported to the attorney general as prescribed by the attorney general. A violation of this subsection subjects an organization to a suspension of its license or permit for up to one year.
2. A licensed organization or an organization that has a restricted event permit shall disburse net proceeds within the period prescribed by rule and for only these educational, charitable, patriotic, fraternal, religious, or public-spirited uses:
  - a. Uses for stimulating and promoting state and community-based economic development programs within the state which improve the quality of life of community residents.
  - b. Uses for developing, promoting, and supporting tourism within a city, county, or the state.

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<sup>249</sup> Section 53-06.1-11.1 was also amended by section 1 of House Bill No. 1142, chapter 457, and section 1 of Senate Bill No. 2186, chapter 458.

- c. Uses benefiting an indefinite number of persons by bringing them under the influence of education, cultural programs, or religion which include disbursements to provide:
- (1) Scholarships for students, if the disbursement is deposited in a scholarship fund for defraying the cost of education to students and the scholarships are awarded through an open and fair selection process.
  - (2) Supplementary assistance to a public or private nonprofit educational institution registered with or accredited by any state.
  - (3) Assistance to libraries and museums.
  - (4) Assistance for the performing arts and humanities.
  - (5) Preservation of cultural heritage.
  - (6) Youth community, social welfare, and athletic activities.
  - (7) Adult amateur athletic activities within the state, including team uniforms and equipment.
  - (8) Maintenance of places of public worship or support of a body of communicants, gathered in common membership for mutual support and edification in piety, worship, or religious observances.
  - (9) Scientific research.
- d. Uses benefiting an indefinite number of persons by relieving them of disease, suffering, or constraint which include disbursements to provide:
- (1) Assistance to an individual or family suffering from poverty or homelessness.
  - (2) Encouragement and enhancement of the active participation of the elderly in our society.
  - (3) Services to the abused.
  - (4) Services to persons with an addicted behavior toward alcohol, gambling, or drugs.
  - (5) Funds to combat juvenile delinquency and rehabilitate ex-offenders.
  - (6) Relief for the sick, diseased, and terminally ill and their physical well-being.
  - (7) Funds for emergency relief and volunteer services.
  - (8) Funds to nonprofit nursing homes, nonprofit day care centers, and nonprofit medical facilities.
  - (9) Social services and education programs aimed at aiding emotionally and physically distressed, handicapped, elderly, and underprivileged persons.

- (10) Funds for crime prevention, fire protection and prevention, and public safety.
  - (11) Funds to relieve, improve, and advance the physical and mental conditions, care and medical treatment, and health and welfare of injured or disabled veterans.
- e. Uses that perpetuate the memory and history of the dead.
  - f. Uses increasing comprehension of and devotion to the principles upon which the nation was founded, including disbursements to aid in teaching the principles of liberty, truth, justice, and equality. However, beauty pageants do not qualify.
  - g. The erection or maintenance of public buildings, facilities, utilities, or waterworks.
  - h. Uses lessening the burden of government which include disbursements to an entity that is normally funded by a city, county, state, or United States government and disbursements directly to a government entity or its agency.
  - i. Uses benefiting a definite number of persons who are the victims of loss of home or household possessions through explosion, fire, flood, or storm and the loss is not covered by insurance.
  - j. Uses benefiting a definite number of persons suffering from a seriously disabling disease or injury causing severe loss of income or incurring extraordinary medical expense which is not covered by insurance.
  - k. Uses, for community service projects, by chambers of commerce exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code. A project qualifies if it develops or promotes public services, including education, housing, transportation, recreation, crime prevention, fire protection and prevention, safety, tourism, and health. Uses that directly benefit a chamber of commerce do not qualify.
  - l. Uses for or of benefit to efforts in support of the health, comfort, or well-being of the community which include disbursements to provide:
    - (1) Funds for adult bands, including drum and bugle corps.
    - (2) Funds for trade shows and conventions conducted in this state.
    - (3) Funds for nonprofit organizations that operate a humane society, zoo, or fish or wildlife reproduction and habitat enhancement program.
    - (4) Funds for public transportation, community celebration, and recreation.
    - (5) Funds for preservation and cleanup of the environment.
  - m. To the extent net proceeds are used toward the primary purpose of a charitable, educational, religious, public safety, or public-spirited organization, or are used for a veterans or public cemetery by a veterans organization, that has obtained a final determination from the internal

revenue service as qualifying for exemption from federal income tax under section 501(c)(3) or 501(c)(19) of the Internal Revenue Code, the organization may establish a special trust fund or foundation as a contingency for funding or maintaining the organization's future program services should the organization discontinue conducting games or dissolve.

- n. Uses for a fundraising activity unrelated to an organization's primary purpose provided that the gross revenue from the activity is disbursed to uses prescribed by this subsection.
3. The eligible uses in subsection 2 do not include the erection, acquisition, property taxes, special assessments, improvement, maintenance, or repair of real property owned or leased by an organization unless the real property is used exclusively for an eligible use or, by a veterans organization, or for office or storage space under subsection 4.
4. A licensed organization or recipient of net proceeds may not use net proceeds for administrative or operating expenses involving the conduct of games, but may designate space within real property used for an organization's primary purpose as office or storage space for gaming-related administration.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 457

### HOUSE BILL NO. 1142

(Representatives Schauer, Klemin, J. Olson, Richter, M. Ruby, Thomas)  
(Senators Dever, Mathern, Paulson, Sorvaag, Wobbema)

AN ACT to amend and reenact subsection 2 of section 53-06.1-11.1 of the North Dakota Century Code, relating to expanding eligible uses for charitable gaming net proceeds; and to declare an emergency.

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

<sup>250</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 53-06.1-11.1 of the North Dakota Century Code is amended and reenacted as follows:

2. A licensed organization or an organization that has a restricted event permit shall disburse net proceeds within the period prescribed by rule and for only these educational, charitable, patriotic, fraternal, religious, or public-spirited uses:
  - a. Uses for stimulating and promoting state and community-based economic development programs within the state which improve the quality of life of community residents.
  - b. Uses for developing, promoting, and supporting tourism within a city, county, or the state.
  - c. Uses benefiting an indefinite number of persons by bringing them under the influence of education, cultural programs, or religion which include disbursements to provide:
    - (1) Scholarships for students, if the disbursement is deposited in a scholarship fund for defraying the cost of education to students and the scholarships are awarded through an open and fair selection process.
    - (2) Supplementary assistance to a public or private nonprofit educational institution registered with or accredited by any state.
    - (3) Assistance to libraries and museums.
    - (4) Assistance for the performing arts and humanities.
    - (5) Preservation of cultural heritage.
    - (6) Youth community, social welfare, and athletic activities.
    - (7) Adult amateur athletic activities within the state, including team uniforms and equipment.

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<sup>250</sup> Section 53-06.1-11.1 was also amended by section 1 of Senate Bill No. 2186, chapter 458, and section 1 of Senate Bill No. 2336, chapter 456.

- (8) Maintenance of places of public worship or support of a body of communicants, gathered in common membership for mutual support and edification in piety, worship, or religious observances.
  - (9) Scientific research.
- d. Uses benefiting an indefinite number of persons by relieving them of disease, suffering, or constraint which include disbursements to provide:
- (1) Assistance to an individual or family suffering from poverty or homelessness.
  - (2) Encouragement and enhancement of the active participation of the elderly in our society.
  - (3) Services to the abused.
  - (4) Services to persons with an addicted behavior toward alcohol, gambling, or drugs.
  - (5) Funds to combat juvenile delinquency and rehabilitate ex-offenders.
  - (6) Relief for the sick, diseased, and terminally ill and their physical well-being.
  - (7) Funds for emergency relief and volunteer services.
  - (8) Funds to nonprofit nursing homes, nonprofit day care centers, and nonprofit medical facilities.
  - (9) Social services and education programs aimed at aiding emotionally and physically distressed, handicapped, elderly, and underprivileged persons.
  - (10) Funds for crime prevention, fire protection and prevention, and public safety.
  - (11) Funds to relieve, improve, and advance the physical and mental conditions, care and medical treatment, and health and welfare of injured or disabled veterans.
- e. Uses that perpetuate the memory and history of the dead.
- f. Uses increasing comprehension of and devotion to the principles upon which the nation was founded, including disbursements to aid in teaching the principles of liberty, truth, justice, and equality. However, beauty pageants do not qualify.
- g. The erection or maintenance of public buildings, facilities, utilities, or waterworks.
- h. Uses lessening the burden of government which include disbursements to an entity that is normally funded by a city, county, state, or United States government and disbursements directly to a government entity or its agency.

- i. Uses benefiting a definite number of persons who are the victims of loss of home or household possessions through explosion, fire, flood, or storm and the loss is not covered by insurance.
- j. Uses benefiting a definite number of persons suffering from a seriously disabling disease or injury causing severe loss of income or incurring extraordinary medical expense which is not covered by insurance.
- k. Uses, for community service projects, by chambers of commerce exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code. A project qualifies if it develops or promotes public services, including education, housing, transportation, recreation, crime prevention, fire protection and prevention, safety, tourism, and health. Uses that directly benefit a chamber of commerce do not qualify.
- l. Uses for or of benefit to efforts in support of the health, comfort, or well-being of the community which include disbursements to provide:
  - (1) Funds for adult bands, including drum and bugle corps.
  - (2) Funds for trade shows and conventions conducted in this state.
  - (3) Funds for nonprofit organizations that operate a humane society, zoo, or fish or wildlife reproduction and habitat enhancement program.
  - (4) Funds for public transportation, community celebration, and recreation.
  - (5) Funds for preservation and cleanup of the environment.
- m. To the extent net proceeds are used toward the primary purpose of a charitable, educational, religious, public safety, or public-spirited organization, or are used for a veterans or public cemetery by a veterans organization, that has obtained a final determination from the internal revenue service as qualifying for exemption from federal income tax under section 501(c)(3) or 501(c)(19) of the Internal Revenue Code, the organization may establish a special trust fund or foundation as a contingency for funding or maintaining the organization's future program services should the organization discontinue conducting games or dissolve.
- n. Uses for a fundraising activity unrelated to an organization's primary purpose provided that the gross revenue from the activity is disbursed to uses prescribed by this subsection.
- o. The administrative and program management expenses of a statewide veterans' organization.

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

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 458

### SENATE BILL NO. 2186

(Senators Klein, Vedaa)  
(Representatives Dockter, Nelson, Weisz)

AN ACT to amend and reenact subsection 3 of section 53-06.1-11.1 of the North Dakota Century Code, relating to eligible uses for charitable gaming net proceeds.

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

<sup>251</sup> **SECTION 1. AMENDMENT.** Subsection 3 of section 53-06.1-11.1 of the North Dakota Century Code is amended and reenacted as follows:

3. The eligible uses in subsection 2 do not include the erection, acquisition, property taxes, special assessments, improvement, maintenance, or repair of real property owned or leased by an organization unless the real property is used exclusively for an eligible use or by a fraternal or veterans organization.

Approved March 14, 2023

Filed March 15, 2023

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<sup>251</sup> Section 53-06.1-11.1 was also amended by section 1 of House Bill No. 1142, chapter 457, and section 1 of Senate Bill No. 2336, chapter 456.

## CHAPTER 459

### SENATE BILL NO. 2281

(Senator Luick)

AN ACT to create and enact section 53-06.1-12.4 of the North Dakota Century Code, relating to the creation of a charitable gaming technology fund; to amend and reenact subsection 2 of section 53-06.1-03 and subsection 1 of section 53-06.1-14 of the North Dakota Century Code, relating to gaming license fees and deposits in a charitable gaming technology fund; to provide a continuing appropriation; and to provide for a transfer.

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

<sup>252</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 53-06.1-03 of the North Dakota Century Code is amended and reenacted as follows:

2. An eligible organization shall apply for a license to conduct only bingo, electronic quick shot bingo, raffles, calcuttas, pull tabs, punchboards, twenty-one, paddlewheels, poker, or sports pools by:
  - a. First securing approval for a site authorization from the governing body of the city or county in which the proposed site is located. Approval, which may be granted at the discretion of the governing body, must be recorded on a site authorization form that is to accompany the license application to the attorney general for final approval. A governing body may not require an eligible organization to donate net proceeds to the city, county, or related political subdivision or for community programs or services within the city or county as a condition for receiving a site authorization from the city or county. A governing body may limit the number of tables for the game of twenty-one per site and the number of sites upon which a licensed organization may conduct games within the city or county. A governing body may charge a one hundred dollar fee for a site authorization; and
  - b. Annually applying for a license from the attorney general before July first on a form prescribed by the attorney general and remitting a one hundred ~~fiftyseventy-five~~ dollar license fee for each city or county that approves a site authorization. The attorney general shall deposit twenty-five dollars of this fee into the charitable gaming technology fund under section 53-06.1-12.4. However, the attorney general may allow an organization that only conducts a raffle or calcutta in two or more cities or counties to annually apply for a consolidated license and remit a one hundred ~~fiftyseventy-five~~ dollar license fee for each city or county in which a site is located. The attorney general shall deposit twenty-five dollars of this fee into the charitable gaming technology fund under section 53-06.1-12.4. An organization shall document that it qualifies as an eligible organization. If an organization amends its primary purpose as stated in its articles of

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<sup>252</sup> Section 53-06.1-03 was also amended by section 1 of Senate Bill No. 2126, chapter 454, section 1 of Senate Bill No. 2154, chapter 455, and section 2 of Senate Bill No. 2304, chapter 453.

incorporation or materially changes its basic character, the organization shall reapply for licensure.

**SECTION 2.** Section 53-06.1-12.4 of the North Dakota Century Code is created and enacted as follows:

**53-06.1-12.4. Charitable gaming technology fund - Continuing appropriation.**

There is created in the state treasury a special fund known as the charitable gaming technology fund. The fund consists of all moneys deposited in the fund pursuant to this chapter. Moneys in the fund are appropriated to the attorney general on a continuing basis and may be used only for contracting for and purchasing equipment and software for a charitable gaming technology system, training employees to operate the system, and maintaining and updating the system.

<sup>253</sup> **SECTION 3. AMENDMENT.** Subsection 1 of section 53-06.1-14 of the North Dakota Century Code is amended and reenacted as follows:

1. A manufacturer of pull tabs, bingo cards, electronic quick shot bingo systems and devices, electronic pull tab devices, or bingo card marking devices shall apply annually for a license and pay a license fee of four~~five~~ thousand five hundred dollars. A manufacturer of electronic pull tab systems and devices shall apply annually for a license and pay a license fee of ten thousand dollars. The attorney general shall deposit one thousand five hundred dollars of these fees into the charitable gaming technology fund under section 53-06.1-12.4. A manufacturer of paper pull tab dispensing devices shall apply annually for a license and pay a license fee of one thousand five hundred dollars. The attorney general shall deposit five hundred dollars of this fee into the charitable gaming technology fund under section 53-06.1-12.4. A manufacturer of fifty-fifty~~electronic~~ raffle systems shall apply annually for a license and pay a license fee of five hundred~~one thousand~~ dollars. The attorney general shall deposit five hundred dollars of this fee into the charitable gaming technology fund under section 53-06.1-12.4. A distributor shall apply annually for a license and pay a license fee of one~~two~~ thousand five hundred dollars. The attorney general shall deposit five hundred dollars of this fee into the charitable gaming technology fund under section 53-06.1-12.4. Application must be made before the first day of April in each year on a form prescribed by the attorney general.

**SECTION 4. TRANSFER - CHARITABLE GAMING OPERATING FUND TO CHARITABLE GAMING TECHNOLOGY FUND.** The office of management and budget shall transfer the sum of \$400,000 from the charitable gaming operating fund to the charitable gaming technology fund during the biennium beginning July 1, 2023, and ending June 30, 2025. The transfer must be made before June 30, 2024.

Approved April 20, 2023

Filed April 21, 2023

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<sup>253</sup> Section 53-06.1-14 was also amended by section 2 of Senate Bill No. 2126, chapter 454.

## CHAPTER 460

### HOUSE BILL NO. 1115

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

AN ACT to amend and reenact subsection 1 of section 53-12.1-11 of the North Dakota Century Code, relating to confidential lottery sales data.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 53-12.1-11 of the North Dakota Century Code is amended and reenacted as follows:

1. The following information and records of the lottery are confidential:
  - a. Sales and income tax information, financial statements, and a credit report of a retailer applicant or person seeking or doing business with the lottery, and retailer application information other than the applicant's name and location;
  - b. Information related to a person owing a debt to the state or having a debt collected through a state agency that is made confidential by another state law or rule;
  - c. Internal control and security procedures, security information on a winning ticket, and information on a bid or contractual data, the disclosure of which is harmful to the efforts of the lottery to contract for goods and services on favorable terms;
  - d. Personal information on a player who purchases an online play or a player who wins a prize on a winning ticket unless the player authorizes, in writing, release of the information; and
  - e. ~~Lottery~~Non-aggregated, identifiable lottery sales data, the disclosure of which is harmful to the competitive position of the lottery, retailer, or person seeking or doing business with the lottery. However, a retailer may authorize the lottery to release the retailer's lottery sales data.

Approved March 14, 2023

Filed March 15, 2023



# STATE GOVERNMENT

## CHAPTER 461

### SENATE BILL NO. 2229

(Senators Cleary, Lee, Meyer)  
(Representatives Dockter, Rohr)

AN ACT to create and enact a new section to chapter 54-02 of the North Dakota Century Code, relating to designating curling as the official state sport.

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

**SECTION 1.** A new section to chapter 54-02 of the North Dakota Century Code is created and enacted as follows:

**State sport.**

Curling is the official sport of the state of North Dakota.

Approved March 23, 2023

Filed March 23, 2023

## CHAPTER 462

### HOUSE BILL NO. 1227

(Representatives Kempenich, Bosch, Cory, Mock, Swiontek, Thomas, Vigesaa)  
(Senators Klein, Meyer, Patten)

AN ACT to create and enact a new section to chapter 54-03 of the North Dakota Century Code, relating to a cost-benefit analysis for a measure or policy affecting the legacy fund.

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

**SECTION 1.** A new section to chapter 54-03 of the North Dakota Century Code is created and enacted as follows:

**Legacy fund - Cost-benefit analysis - Legacy and budget stabilization fund advisory board - State retirement and investment office - Legislative management procedures.**

1. The legacy and budget stabilization fund advisory board shall review any legislative, initiated, or referred measure for asset allocation and investment policy affecting the legacy fund. If the advisory board determines the measure or policy affects the legacy fund, the advisory board shall request the state retirement and investment office to arrange for the preparation and submission of a cost-benefit analysis.
2. The cost-benefit analysis must:
  - a. Include the estimated fiscal impact of the measure or policy for the next biennium and for the next ten bienniums.
  - b. Be prepared by an independent consultant paid by the state retirement and investment office.
3. If the legislative management determines a legislative measure affects the legacy fund, the measure may not be referred to a committee of the legislative assembly unless a cost-benefit analysis is appended to that measure.
  - a. If a committee of the legislative assembly determines a measure affecting the legacy fund was referred to committee without a cost-benefit analysis, the committee shall request a cost-benefit analysis. The committee may not act on the measure unless the measure is accompanied by the cost-benefit analysis.
  - b. If a committee of the legislative assembly determines a proposed amendment to a measure affects the legacy fund, the committee may not act on the proposed amendment unless the amendment is accompanied by a cost-benefit analysis or amended cost-benefit analysis.
4. The legislative management shall adopt a procedure for identifying measures and proposed measures affecting the legacy fund. The procedure must include solicitation of draft measures and proposals during the interim

between legislative sessions from legislators and agencies with bill introduction privileges and must include deadlines for identification of the measures or proposals. If the legacy and budget stabilization fund advisory board has not requested a cost-benefit analysis for a measure or proposed measure, the legislative management shall request the state retirement and investment office to arrange for the preparation and submission of a cost-benefit analysis.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 463

### HOUSE BILL NO. 1172

(Representatives Steiner, Cory, Fisher, Hauck, Hoverson, Longmuir, Tveit)  
(Senators Clemens, Dwyer, Luick, Vedaa)

AN ACT to create and enact a new section to chapter 54-06 of the North Dakota Century Code, relating to the pledge of allegiance.

#### **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:

#### **Pledge of allegiance.**

Notwithstanding any other provision of law, the governor or an executive branch officer or employee may not alter the language of the pledge of allegiance. The voluntary pledge is "I pledge allegiance to the flag, of the United States of America, and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all."

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 464

### HOUSE BILL NO. 1368

(Representatives K. Anderson, Bellew, M. Ruby, Strinden, Timmons, Tveit)  
(Senators Clemens, Kannianen, Myrdal)

AN ACT to create and enact a new section to chapter 54-06 and a new section to chapter 54-44.4 of the North Dakota Century Code, relating to contracts with companies that boycott Israel and a prohibition on investments.

#### 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:

##### **Investments - Prohibition - Israel boycott.**

1. As used in this section "boycott Israel" means engaging in refusals to deal, terminating business activities, or other similar commercial actions intended to limit commercial relations with persons doing business in Israel or in Israeli-controlled territories when the actions are taken:
  - a. In compliance or adherence to calls for a boycott of Israel, other than those boycotts under Public Law No. 96-72 [50 U.S.C. 2407(c)]; or
  - b. In a manner that discriminates on the basis of nationality, national origin, or religion.
2. Notwithstanding any other provision of law, the state may not adopt any investment policy that would have the effect of requiring or inducing any person to boycott Israel.
3. If the state receives evidence that a company boycotts Israel, the state shall determine whether the company boycotts Israel. If accompanied by the conduct described under subsection 1, a company statement that indicates the company is participating in a boycott of Israel or has taken boycott action at the request, in compliance with, or in furtherance of calls for a boycott of Israel, may be considered as one type of evidence that the company is participating in a boycott of Israel. An expressive activity, alone, directed at a specific person or a governmental action may not be considered evidence of a boycott of Israel.

**SECTION 2.** A new section to chapter 54-44.4 of the North Dakota Century Code is created and enacted as follows:

##### **Purchasing contracts - Prohibition - Israel boycott.**

1. As used in this section:
  - a. "Boycott Israel" means engaging in refusals to deal, terminating business activities, or other similar commercial actions intended to limit commercial

relations with persons doing business in Israel or in Israeli-controlled territories when the actions are taken:

- (1) In compliance or adherence to calls for a boycott of Israel, other than those boycotts under Public Law No. 96-72 [50 U.S.C. 2407(c)]; or
  - (2) In a manner that discriminates on the basis of nationality, national origin, or religion.
- b. "Company" means any organization, association, corporation, partnership, joint venture, limited partnership, limited liability company, or other entity or business association, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate.
2. A state entity that enters a contract that includes a provision prohibiting discrimination shall require the contract to include a provision prohibiting a party to the contract from boycotting Israel for the duration of the contract. The office of management and budget or purchasing agency may waive the requirement in this subsection if the waiver is in the best interest of the state. A waiver under this subsection may not affect the enforceability of a contract.
  3. If the state receives evidence that a company boycotts Israel, the state shall determine whether the company boycotts Israel. If accompanied by the conduct described under subsection 1, a company statement that indicates the company is participating in a boycott of Israel or has taken boycott action at the request, in compliance with, or in furtherance of calls for a boycott of Israel, may be considered as one type of evidence that the company is participating in a boycott of Israel. An expressive activity, alone, directed at a specific person or a governmental action may not be considered evidence of a boycott of Israel.
  4. This section does not apply to:
    - a. A contract with a value of less than one hundred thousand dollars; or
    - b. A contract with a company that has fewer than ten full-time employees.

Approved April 6, 2023

Filed April 10, 2023

## CHAPTER 465

### SENATE BILL NO. 2116

(Workforce Development Committee)  
(At the request of Workforce Safety and Insurance)

AN ACT to amend and reenact subsection 1 of section 54-06-04, subsection 4 of section 65-01-15.1 as amended in section 2 of House Bill No. 1279, as approved by the sixty-eighth legislative assembly, subsection 5 of section 65-01-15.2, as created in section 3 of House Bill No. 1279, as approved by the sixty-eighth legislative assembly, and sections 65-02-09, 65-03-01, 65-04-30, and 65-05.1-08 of the North Dakota Century Code, relating to reports submitted to the governor and secretary of state, presumption of compensability for firefighters and law enforcement officers, information provided by workforce safety and insurance to the public, enforcement of safety regulations, submission of financial statements to the office of management and budget, and the organization's educational revolving loan fund; and to repeal sections 65-01-13, 65-02-28, 65-03-02, and 65-04-17.1 of the North Dakota Century Code, relating to an information fund and continuing appropriation to pay publication and statistical processing expenses, organization claim file destruction, penalty for violation of a safety rule or regulation, and the retrospective rating program.

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

<sup>254</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 54-06-04 of the North Dakota Century Code is amended and reenacted as follows:

1. The following executive and administrative officers and departments shall submit to the governor and the secretary of state reports covering their operations for the two preceding fiscal years, except as otherwise provided by law, not later than the first day of December each year after the regular session of the legislative assembly:
  - a. Secretary of state.
  - b. State auditor.
  - c. Insurance commissioner.
  - d. Attorney general.
  - e. Agriculture commissioner.
  - f. Superintendent of public instruction.
  - g. State tax commissioner.
  - h. Public service commission.

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<sup>254</sup> Section 54-06-04 was also amended by section 1 of House Bill No. 1085, chapter 466.

- i. Department of corrections and rehabilitation.
- j. Department of transportation.
- k. Department of health and human services.
- l. ~~Workforce safety and insurance.~~
- m-l. Office of management and budget.
- n-m. State treasurer.
- o-n. Labor commissioner.
- p-o. Department of financial institutions.
- q-p. Game and fish department.
- r-q. Industrial commission.
- s-r. Job service North Dakota.
- t-s. Board of university and school lands.
- u-t. Department of environmental quality.

<sup>255</sup> **SECTION 2. AMENDMENT.** Subsection 4 of section 65-01-15.1 of the North Dakota Century Code, as amended in section 2 of House Bill No. 1279, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

4. For purposes of this section, "law enforcement officer" means an individual who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, the Bismarck state college police department, a county sheriff's department, a city police department, or the parks and recreation department pursuant to section 55-08-04.

<sup>256</sup> **SECTION 3. AMENDMENT.** Subsection 5 of section 65-01-15.2 of the North Dakota Century Code, as created in section 3 of House Bill No. 1279, as approved by the sixty-eighth legislative assembly, is amended and reenacted as follows:

5. For purposes of this section, "law enforcement officer" means an individual who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, the Bismarck state college police department, a

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<sup>255</sup> Section 65-01-15.1 was also amended by section 2 of House Bill No. 1279, chapter 582.

<sup>256</sup> Section 65-01-15.2 was created by section 3 of House Bill No. 1279, chapter 582.

county sheriff's department, a city police department, or the parks and recreation department pursuant to section 55-08-04.

**SECTION 4. AMENDMENT.** Section 65-02-09 of the North Dakota Century Code is amended and reenacted as follows:

**65-02-09. General information to public – Biennial report.**

~~The organization, from time to time, may publish and distribute among employers and employees general information as to the business transacted by the organization as in its judgment may be useful. The director shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. The report must include organization shall make the following information from no less than the two previous fiscal years available to the public:~~

1. A statement of the number of awards made by it.
2. A general statement of the causes of accidents leading to the injuries for which the awards were made.
3. A detailed statement of the disbursements from the fund.
4. A statement of the conditions of the various funds carried by the organization.
5. A breakdown of those allocated loss adjustment expenses that reflect the attorney's fees and costs paid to attorneys who represent injured workers, the attorney's fees and costs paid to attorneys with whom the organization contracts to represent the organization, the amount paid for administrative law judges for hearings, and the amount paid for the court reporter and any other legal expenses.
6. ~~Any other matters which the organization wishes to call to the attention of the governor, including any recommendation for legislation or otherwise which it may have to make.~~

**SECTION 5. AMENDMENT.** Section 65-03-01 of the North Dakota Century Code is amended and reenacted as follows:

**65-03-01. Jurisdiction of organization - Safety regulations - Enforcement.**

~~The organization shall have full power and jurisdiction over, and the supervision of, every employment and place of employment subject to the provisions of this title, and whenever, Whenever necessary adequately to enforce and administer this title, shall the organization may issue and enforce all necessary and proper rules and safety regulations. The organization may designate some suitable person an individual to make inspections to and determine if safety rules and regulations are being followed or complied with.~~

**SECTION 6. AMENDMENT.** Section 65-04-30 of the North Dakota Century Code is amended and reenacted as follows:

**65-04-30. State treasurer is custodian of fund - Deposit - Disbursement on vouchers.**

The state treasurer is the custodian of the fund and all payments of awards of the organization for disbursements other than travel and administrative expenses must be paid by the state treasurer upon warrant-checks authorized and prepared by the

organization. Warrants drawn upon the fund and paid by the state treasurer must be returned to the organization and must be kept in the files of the organization. The organization shall submit to the office of management and budget once each month a monthly financial statement showing the receipts, disbursements, investments, and status of the fund. The treasurer may deposit any portion of the fund not needed for immediate use in the manner and subject to the requirements prescribed by law for the deposit by the treasurer of state funds. Any interest earned by any portion of the fund which is deposited by the state treasurer under this section must be collected by the state treasurer and placed to the credit of the fund.

**SECTION 7. AMENDMENT.** Section 65-05.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**65-05.1-08. Workforce safety and insurance educational revolving loan fund –~~Vocational~~vocational rehabilitation grants - Continuing appropriation.**

1. ~~The organization may establish a revolving loan fund to provide a low-interest loan to an injured employee or to a surviving spouse or child of an injured employee whose death resulted from a compensable injury under section 65-05-16; or to the spouse or child of an injured employee deemed to be catastrophically injured as defined in subdivision c of subsection 2 of section 65-05.1-06.1; or to the spouse or child of an injured employee deemed to be eligible for permanent total disability benefits as defined in section 65-01-02.~~
2. ~~The loan must be used to pursue an education at an accredited institution of higher education or an institution of technical education. In order to be eligible for a loan under this section, an individual must have obtained a high school diploma or its equivalent and either must be ineligible for retraining under this chapter or must have exhausted training and education benefits. A child of an injured employee must meet the definition of child at the time of the initial loan application in order to be eligible for a loan. The Bank of North Dakota and the organization shall establish loan eligibility requirements and make application determinations based on the established criteria. The loan application must require an applicant to demonstrate a viable education plan that will enable the individual to achieve gainful employment.~~
3. ~~The total amount loaned annually under this section may not exceed two million five hundred thousand dollars. The maximum amount payable on behalf of a loan 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 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. As determined necessary, the organization may transfer uncommitted moneys of the revolving loan fund to the workforce safety and insurance fund.~~
4. The organization may implement a grant program to promote and provide necessary educational opportunities for injured employees within the

vocational rehabilitation process. The organization may award a grant to promote necessary skills upgrading and to provide for the completion of remedial educational requirements which allow for optimal transition into the labor force. The total annual amount the organization may grant under this ~~subsection~~section may not exceed one hundred thousand dollars. The organization shall establish grant eligibility requirements and make grant determinations based on the established criteria. Moneys are appropriated on a continuing basis ~~from uncommitted moneys in the educational revolving loan fund~~ for the purpose of funding the grants under this ~~subsection~~section and for payment of educational revolving loan fund obligations after July 31, 2023.

**SECTION 8. REPEAL.** Sections 65-01-13, 65-02-28, 65-03-02, and 65-04-17.1 of the North Dakota Century Code are repealed.

Approved March 29, 2023

Filed March 30, 2023

## CHAPTER 466

### HOUSE BILL NO. 1085

(Government and Veterans Affairs Committee)  
(At the request of the Office of Management and Budget)

AN ACT to create and enact subsection 7 of section 54-06-04 of the North Dakota Century Code, relating to information required in biennial reports to be maintained on agency websites as alternative to printed reports.

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

<sup>257</sup> **SECTION 1.** Subsection 7 of section 54-06-04 of the North Dakota Century Code is created and enacted as follows:

7. In lieu of printed biennial reports, an agency identified in subsection 1, may post the materials and contents determined under subsection 2 on the agency website not later than the date specified under subsection 1 and retain the materials on its website until the subsequent biennial report is posted to the agency website or biennial reports are printed and delivered under this section. An agency that elects to post the biennial report information on the agency's website shall transmit in electronic form the contents to the state archivist in the manner and format determined by the director of the state historical society.

Approved March 14, 2023

Filed March 15, 2023

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<sup>257</sup> Section 54-06-04 was also amended by section 1 of Senate Bill No. 2116, chapter 465.

## CHAPTER 467

### HOUSE BILL NO. 1508

(Representatives O'Brien, Lefor, Nathe, Sanford, Schreiber-Beck)  
(Senators Kreun, Meyer)

AN ACT to amend and reenact section 54-10-01 of the North Dakota Century Code, relating to duties of the state auditor.

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

<sup>258</sup> **SECTION 1. AMENDMENT.** Section 54-10-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **54-10-01. Powers and duties of state auditor.**

1. The state auditor shall:
  - a. Be vested with the duties, powers, and responsibilities involved in performing the postaudit of all financial transactions of state government, detecting and reporting any defaults, and determining that expenditures have been made in accordance with law and appropriation acts.
  - b. Perform or provide for the audit of the general purpose financial statements and a review of the material included in the comprehensive annual financial report of the state in accordance with government auditing standards.
  - c. Perform or provide for audits of state agencies in accordance with government auditing standards and legislative audit and fiscal review committee guidelines developed under section 54-35-02.10. Except for the annual audit of the North Dakota lottery required by section 53-12.1-03, the state auditor shall audit each state agency once every two years. Audits may be conducted at more frequent intervals if requested by the governor or the legislative audit and fiscal review committee. The state auditor shall charge an amount equal to the cost of the audit and other services rendered by the state auditor to all agencies that receive and expend moneys from other than the general fund. This charge may be reduced for an agency that receives and expends both general fund and nongeneral fund moneys. State agencies shall use nongeneral fund moneys to pay for the cost of the audit. If nongeneral fund moneys are not available, the agency may, upon approval of the legislative assembly, or the budget section if the legislative assembly is not in session, use general fund moneys to pay for the audit. Any budget section action under this subdivision must comply with section 54-35-02.9.
  - d. Perform or provide for performance audits of state agencies, or the agencies' blended component units or discreetly presented component

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<sup>258</sup> Section 54-10-01 was also amended by section 4 of Senate Bill No. 2004, chapter 36, section 1 of Senate Bill No. 2180, chapter 468, and section 2 of Senate Bill No. 2259, chapter 469.

units, as determined necessary by the legislative assembly, or the legislative audit and fiscal review committee if the legislative assembly is not in session. When determining the necessity of a performance audit, the legislative audit and fiscal review committee shall consider:

- (1) The potential cost-savings or efficiencies that may be gained as a result of the performance audit;
  - (2) The staff resources of the state auditor's office and of the state agency being audited which will be required to conduct the audit;
  - (3) The potential for discovery of noncompliance with state law or legislative intent regarding the program or agency; and
  - (4) The potential for the performance audit to identify opportunities for program improvements.
- e. Report quarterly to the legislative audit and fiscal review committee regarding:
- (1) Communication processes with audited entities and any changes to the processes;
  - (2) Billing practices and procedures, including the use of cost estimates for audits, an itemized invoicing methodology, and a defined change order process for audits that exceed the original estimate;
  - (3) Information on audits completed, including:
    - (a) Name of the audited organization;
    - (b) Organization type;
    - (c) Audit type;
    - (d) Audit period;
    - (e) Estimated and actual hours and costs; and
    - (f) Total audit cost and the total cost as a percentage of the audited organization's operating budget; and
  - (4) Audit schedules, including audits performed by private firms and audits performed by the state auditor's office.
- f. Report on the functions of the state auditor's office to the governor and the secretary of state in accordance with section 54-06-04 or more often as circumstances may require.
- f.g. Perform work on mineral royalties for the federal government in accordance with section 1735(a) of the Mineral Lands and Mining Act [30 U.S.C. 1735 et seq.].
- g-h. Perform all other duties as prescribed by law.

2. The state auditor may:

- a. Conduct any work required by the federal government.
- b. Within the resources available to the state auditor, perform or provide for performance audits of state agencies as determined necessary by the state auditor.
- c. Audit the International Peace Garden at the request of the board of directors of the International Peace Garden.
- d. Contract with a private certified public accountant or other qualified professional to conduct or assist with an audit, review, or other work the state auditor is authorized to perform or provide for under this section. Before entering any contract, the state auditor shall present information to the legislative audit and fiscal review committee on the need for the contract and its estimated cost and duration. Except for performance audits conducted under subdivision d of subsection 1 or subdivision b of this subsection and except for audits of occupational or professional boards, the state auditor shall execute the contract and any executive branch agency, including higher education institutions, shall pay the fees of the contractor. For performance audits conducted under subdivision d of subsection 1 or subdivision b of this subsection, the state auditor may charge a state agency for the cost of a contract relating to an audit, subject to approval by the legislative assembly or the legislative audit and fiscal review committee if the legislative assembly is not in session. When considering a request, the legislative audit and fiscal review committee shall consider the effect of the audit cost on the agency being audited, the necessity of the contract, and the potential benefit to the state resulting from the contract. The state auditor shall notify the affected agency of the potential cost before requesting approval from the legislative assembly or the legislative audit and fiscal review committee.

Approved April 29, 2023

Filed May 1, 2023

## CHAPTER 468

### SENATE BILL NO. 2180

(Senators Klein, Magrum, Myrdal)  
(Representatives Monson, Vigesaa, Weisz)

AN ACT to amend and reenact subsection 1 of section 54-10-01, sections 54-10-14, 54-10-15, and 54-10-27 of the North Dakota Century Code, relating to the annual comprehensive financial report, audits of state agencies, reports, financial audits, and petitions; and to provide for retroactive application.

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

<sup>259</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 54-10-01 of the North Dakota Century Code is amended and reenacted as follows:

1. The state auditor shall:
  - a. Be vested with the duties, powers, and responsibilities involved in performing the postaudit of all financial transactions of state government, detecting and reporting any defaults, and determining that expenditures have been made in accordance with law and appropriation acts.
  - b. Perform or provide for the audit of the general purpose financial statements and a review of the material included in the ~~comprehensive~~ annual comprehensive financial report of the state in accordance with government auditing standards.
  - c. Perform or provide for audits of state agencies in accordance with government auditing standards and legislative audit and fiscal review committee guidelines developed under section 54-35-02.10. Except for the annual audit of the North Dakota lottery required by section 53-12.1-03, the state auditor shall audit each state agency once every two to four years. Audits may be conducted at more frequent intervals if requested by the governor or the legislative audit and fiscal review committee. The state auditor shall charge an amount equal to the cost of the audit and other services rendered by the state auditor to all agencies that receive and expend moneys from other than the general fund. This charge may be reduced for an agency that receives and expends both general fund and nongeneral fund moneys. State agencies shall use nongeneral fund moneys to pay for the cost of the audit. If nongeneral fund moneys are not available, the agency may, upon approval of the legislative assembly, or the budget section if the legislative assembly is not in session, use general fund moneys to pay for the audit. Any budget section action under this subdivision must comply with section 54-35-02.9.
  - d. Perform or provide for performance audits of state agencies, or the agencies' blended component units or discreetly presented component

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<sup>259</sup> Section 54-10-01 was also amended by section 1 of House Bill No. 1508, chapter 467, section 4 of Senate Bill No. 2004, chapter 36, and section 2 of Senate Bill No. 2259, chapter 469.

units, as determined necessary by the legislative assembly, or the legislative audit and fiscal review committee if the legislative assembly is not in session. When determining the necessity of a performance audit, the legislative audit and fiscal review committee shall consider:

- (1) The potential cost-savings or efficiencies that may be gained as a result of the performance audit;
  - (2) The staff resources of the state auditor's office and of the state agency being audited which will be required to conduct the audit;
  - (3) The potential for discovery of noncompliance with state law or legislative intent regarding the program or agency; and
  - (4) The potential for the performance audit to identify opportunities for program improvements.
- e. Report on the functions of the state auditor's office to the governor and the secretary of state in accordance with section 54-06-04 or more often as circumstances may require.
- f. Perform work on mineral royalties for the federal government in accordance with section 1735(a) of the Mineral Lands and Mining Act [30 U.S.C. 1735 et seq.].
- g. Perform all other duties as prescribed by law.

**SECTION 2. 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.**

1. The state auditor shall audit the following political subdivisions once every two years, except as provided in this section or otherwise by law:
  - a. Counties.
  - b. Cities, and when a city is audited, to include any political subdivision that was created by the city and has bonding authority.
  - c. Park districts.
  - d. School districts.
  - e. Firefighters relief associations.
  - f. Airport authorities.
  - g. Public libraries.
  - h. Water resource districts.
  - i. Garrison Diversion Conservancy District.
  - j. Rural fire protection districts.

- k. Special education districts.
  - l. Area career and technology centers.
  - m. Correction centers.
  - n. Recreation service districts.
  - o. Weed boards.
  - p. Irrigation districts.
  - q. Rural ambulance service districts.
  - r. Southwest water authority.
  - s. Regional planning councils.
  - t. Soil conservation districts.
  - u. Western area water supply authority industrial water sales on an annual basis.
2. 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.
  3. In lieu of conducting an audit every two years, the state auditor may require annual reports from political subdivisions subject to this section, or otherwise provided by law, for any report delinquent as of June 30, 2023, or from political subdivisions with less than seven hundred fifty thousand two million 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:~~
    - a. 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~~
    - b. 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~~
    - c. Charge a political subdivision a fee not to exceed ~~eighty-six ninety~~ dollars an hour for the costs of reviewing the annual report.
  4. 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 annually shall register with the state auditor and 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 ~~eighty-six~~<sup>ninety</sup> dollars an hour, but not to exceed seven hundred fifty dollars per review, for the related costs of reviewing the audit report and workpapers.

5. 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.
6. 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 must result in audits being resumed by the state auditor until the irregularities, objectionable accounting procedures, or illegal actions are corrected.

**SECTION 3. 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~~request~~ of governor or order of the legislative audit and fiscal review committee, upon petition, or upon request of the state court administrator.**

1. 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.~~ The state auditor, by duly appointed auditors or other authorized agents, may audit or review the books, records, and financial accounts of any political subdivisions when requested by the governor, 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.
2. If an audit is ordered due to financial irregularities or allegations of embezzlement, the governor may suspend an elected or appointed school

board member from the individual's duties if the governor determines suspension is in the best interest of the state pending the results of the audit. If the governor suspends an elected or appointed school board member, the governor immediately shall provide notice to the school board with which the suspended member serves. Within five days of receiving notice, the school board shall appoint an individual to replace the suspended member to serve during the pendency of the audit. The governor shall consult with the superintendent of public instruction in determining whether suspension of a member of a school board is in the best interest of the state.

**SECTION 4. AMENDMENT.** Section 54-10-27 of the North Dakota Century Code is amended and reenacted as follows:

**54-10-27. Occupational and professional boards - Audits and reports.**

The governing board of any occupational or professional board shall provide for an audit once every two years by a certified public accountant or licensed public accountant. The accountant conducting the audit shall submit the audit report to the state auditor's office. If the report is in the form and style prescribed by the state auditor, the state auditor may not audit that board. An occupational or professional board may request the state auditor to conduct its audit, and if the state auditor agrees to conduct the audit, the state auditor shall deposit the fees charged to the occupational or professional board into the state auditor operating account. Instead of providing for an audit every two years, an occupational or professional board that has less than two hundred thousand dollars of annual receipts may submit an annual report to the state auditor. The report must contain the 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 occupational or professional board an amount equal to the fair value of the additional examination or audit and any other services rendered. The state auditor may charge an occupational or professional board a fee not to exceed ~~eighty-six~~ninety dollars an hour for the costs of reviewing the annual report.

**SECTION 5. RETROACTIVE APPLICATION.** This Act applies retroactively to cases arising after January 1, 2022.

Approved March 22, 2023

Filed March 23, 2023

## CHAPTER 469

### SENATE BILL NO. 2259

(Senators Klein, Luick, Myrdal)  
(Representatives D. Johnson, Schreiber-Beck, Thomas)

AN ACT to amend and reenact subsection 2 of section 4.1-44-04 and subdivision c of subsection 1 of section 54-10-01 of the North Dakota Century Code, relating to audit fees charged by the state auditor.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 4.1-44-04 of the North Dakota Century Code is amended and reenacted as follows:

2. The presiding officer of each house of the legislative assembly may direct 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, and 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, also must include a statean auditor's report on the commodity group's single-page uniform statement of revenues and expenditures for the previous two fiscal years or an annual financial statement audit as required by the respective group's national association.

<sup>260</sup> **SECTION 2. AMENDMENT.** Subdivision c of subsection 1 of section 54-10-01 of the North Dakota Century Code is amended and reenacted as follows:

- c. Perform or provide for audits of state agencies in accordance with government auditing standards and legislative audit and fiscal review committee guidelines developed under section 54-35-02.10. Except for the annual audit of the North Dakota lottery required by section 53-12.1-03, the state auditor shall audit each state agency once every two years. Audits may be conducted at more frequent intervals if requested by the governor or the legislative audit and fiscal review committee. The state auditor shall charge an amount equal to the cost of the audit and other services rendered by the state auditor to all agencies that receive and expend moneys from other than the general fund. This charge may be reduced for an agency that receives and expends both general fund and nongeneral fund moneys. The charge for an audit of an agricultural commodity group listed in section 4.1-44-04 must be six thousand dollars for an annual financial statement audit or four thousand dollars for a two-year single-page financial statement audit performed during the biennium ending June 30, 2025, and may be increased by five percent on July first of each odd-numbered year thereafter. State agencies shall use nongeneral fund moneys to pay for the cost of the audit. If nongeneral fund moneys are not available, the agency may, upon approval of the

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<sup>260</sup> Section 54-10-01 was also amended by section 1 of House Bill No. 1508, chapter 467, section 4 of Senate Bill No. 2004, chapter 36, and section 1 of Senate Bill No. 2180, chapter 468.

legislative assembly, or the budget section if the legislative assembly is not in session, use general fund moneys to pay for the audit. Any budget section action under this subdivision must comply with section 54-35-02.9.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 470

### HOUSE BILL NO. 1528

(Representatives Mock, Bosch, Ista, Kempenich, Louser, Roers Jones, Toman,  
Weisz)  
(Senators Davison, Paulson, K. Roers, Wanzek)

AN ACT to amend and reenact sections 15-10-44, 54-46-02, 54-46-04, 54-46-05, and 54-46-08 of the North Dakota Century Code, relating to the retention of electronic mail for institutions under the control of the state board of higher education, final disposition of records, mandatory records retention policies for state agencies, and the administration of employee accounts upon employee departure from an agency; to provide for a legislative management study; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 15-10-44 of the North Dakota Century Code is amended and reenacted as follows:

#### **15-10-44. Higher education information technology - Board duties - Reports.**

1. The state board of higher education shall manage and regulate information technology planning and services for institutions under its control, including:
  - a. Development of information technology policies, standards, and guidelines in coordination with the information technology department.
  - b. Implementation of a process for project management oversight and reporting.
  - c. Integration of higher education information technology planning and reporting with the board's strategic planning process and annual performance and accountability report required by section 15-10-14.2.
  - d. Participation in internet2 or other advanced higher education or research-related networking projects as provided in section 54-59-08.
  - e. Development of an annual report concerning higher education information technology planning and services.
  - f. Requiring utilization by each institution under the control and supervision of the board of systemwide electronic mail services provided by the board for all public business electronic correspondence.
  - g. Development and implementation of an electronic mail retention policy for the board and institutions under the supervision and control of the board which requires retention of nonstudent employee electronic mail messages for at least two years~~one year~~ after the creation or receipt of the message unless the electronic mail message includes malware or regulated information as defined under section 54-59.1-01.

2. The state board of higher education shall collaborate with the information technology department to coordinate higher education information technology planning with statewide information technology planning.
3. The state board of higher education shall provide advice to the information technology department regarding the development of policies, standards, and guidelines relating to access to or use of wide area network services as provided by section 54-59-09.
4. The state board of higher education shall present information regarding higher education information technology planning, services, and major projects to the information technology committee on request of the committee.

**SECTION 2. AMENDMENT.** Section 54-46-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-46-02. Definitions.**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Agency" means any department, office, commission, board, or other unit, however designated, of the executive branch of state government, including the state board of higher education and the entities under the control of the state board of higher education.
  2. "Data" does not include malware or regulated information as defined under section 54-59.1-01.
  3. "Departmental agency" means an agency, not including a board or commission as defined by titles 4.1 and 4.3.
  4. "Record" means document, book, paper, photograph, electronic mail or communication, sound recording or other material, regardless of physical form or characteristics, made or received pursuant to law or in connection with the transaction of official business activities, policies, or decisions that provide administrative, operational, fiscal, historical, audit, or business value. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, nonbusiness-related or draft electronic messages and stocks of publications and of processed documents are not included within the definition of records as used in this chapter.
- ~~3.5.~~ "State record" means:
- a. A record of a department, office, commission, board, or other agency, however designated, of the state government.
  - b. A record of the state legislative assembly held by an agency.
  - c. A record of any court of record, whether of statewide or local jurisdiction.
  - d. Any other record designated or treated as a state record under state law.

**SECTION 3. AMENDMENT.** Section 54-46-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-46-04. Duties of administrator.**

The administrator shall, with due regard for the functions of the agencies concerned:

1. Establish standards, procedures, and techniques for effective management of records.
2. Make continuing surveys of ~~paperwork~~ operations and recommend improvements in current records management practices including the use of space, equipment, and supplies employed in creating, maintaining, storing, and servicing records.
3. Establish standards for the preparation of schedules providing for the retention of state records of continuing value and for the final disposition of state records no longer possessing administrative, legal, or fiscal value.
4. Ensure that each departmental agency maintains, for at least one year, data contained in electronic mail accounts for agency heads, state officers appointed by the governor under chapter 44-02, and elected executive branch officials.
5. Develop a training program for agencies regarding the management of state records.
6. Obtain reports from agencies as are required for the administration of the program.
7. Receive reports of noncompliance with the records management program. Upon review of the report, the administrator shall:
  - a. Recommend training for the noncompliant agency;
  - b. Submit the report to human resource management services for consultation to determine whether disciplinary action is appropriate;
  - c. Submit the report to the office of the state auditor to include noncompliance findings in the agency's audit and to determine whether reporting findings of noncompliance to the legislative audit and fiscal review committee is appropriate; or
  - d. Submit the report to the office of the attorney general to determine appropriate action, including prosecution or referral to human resource management services or the agency's human resources department for disciplinary action.

**SECTION 4. AMENDMENT.** Section 54-46-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-46-05. Duties of agency heads.**

The head of each agency shall:

1. Establish and maintain an active, continuing program for the economical and efficient management of the records of the agency.

2. Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities.
3. Submit to the administrator, in accordance with the standards adopted by the administrator, schedules proposing the length of time each state record series warrants retention for administrative, legal, or fiscal purposes after it has been received by the agency.
4. Submit to the administrator lists of state records in the custody of the agency which are not needed in the transaction of current business and which do not have administrative, legal, or fiscal value.
5. Cooperate with the administrator in the conduct of surveys made by the administrator pursuant to this chapter, including resolving findings of noncompliance with the records management program as may be indicated in the final survey report. Failure to cooperate with the administrator may result in reported noncompliance as authorized under subsection 6 of section 54-46-04.
6. Comply with the rules, standards, and procedures adopted by the administrator.

<sup>261</sup> **SECTION 5. AMENDMENT.** Section 54-46-08 of the North Dakota Century Code is amended and reenacted as follows:

**54-46-08. Determination necessary for final disposition of records - Review of state data.**

1. Prior to the final disposition of any type or class of record, the administrator, after consultation with the official or department head ~~concerned~~owning the record, the attorney general, the state auditor, and the state archivist, shall determine that the type or class of record has no further administrative, legal, or fiscal value and is subject to final disposition under section 54-46-08.1 or section 54-46-09.
2. Each departmental agency shall maintain, for at least one year, data contained in electronic mail accounts and personal file storage, for agency heads, state officers appointed by the governor under chapter 44-02, and elected executive branch officials.
3. a. Each agency shall develop policies related to the assumption of employee account ownership upon employee departure. For an employee who holds a supervisory position or above, the agency shall place on hold an employee account to preserve the employee account if one of the following occurs:
  - (1) The employee is involuntarily terminated;
  - (2) The employee is placed on administrative leave;

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<sup>261</sup> Section 54-46-08 was also amended by section 8 of House Bill No. 1021, chapter 21.

- (3) The employee resigns or departs without notice;
- (4) The employee dies; or
- (5) An event the agency deems sufficient to place the account on hold.
- b. An agency shall ensure the employee account remains on hold until the account has been reviewed by the appropriate individual. The head of an agency, a records manager, or an employee designated by the head of an agency, shall review the employee account for all supervisory employees, except as required under subdivision c.
- c. If the employee was the head of an agency, a state officer appointed by the governor under chapter 44-02, or an elected executive branch official, the employee account must be reviewed by the employee's successor and, if the administrator deems it necessary, the state archivist.
- d. For purposes of this subsection:
  - (1) "Employee account" means physical files and electronic files, communications, attachments, and other information stored in an employee electronic mail account or electronic file storage account;
  - (2) "Employee's successor" does not include an individual acting in the successor's role or position temporarily before a successor is appointed under section 44-02-03; and
  - (3) "On hold" means in a state of preservation in which nothing may be altered and for which access is immediately restricted to review by the appropriate individual as required under this subsection.
- 4. If a statute requiring retention of a record does not either provide a specific retention period or specifically provide that the record be permanently retained, the administrator, after completing the consultation required by this section, shall establish a specific retention period for the record. The administrator shall annually survey the state agencies and shall order final disposition under section 54-46-08.1 or section 54-46-09 of any records which have been determined to have no further administrative, legal, or fiscal value pursuant to this section.

## **SECTION 6. LEGISLATIVE MANAGEMENT STUDY - EXECUTIVE BRANCH BOARD AND COMMISSION POLICIES.**

- 1. During the 2023-24 interim, the legislative management shall consider studying the records management policies of state agencies, including boards and commissions. The study must include:
  - a. A review of policy uniformity and training resources;
  - b. An analysis of technological capabilities and limitations;
  - c. Evaluation of the feasibility of providing electronic mail and file service solutions for statewide public entities, including boards and commissions; and

- d. An analysis of the development, implementation, enforcement, and auditing of records management policies and practices.
2. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 7. EFFECTIVE DATE.** This Act becomes effective on July 1, 2023.

**SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 21, 2023

Filed April 24, 2023

## CHAPTER 471

### SENATE BILL NO. 2208

(Senators Magrum, Cleary)  
(Representatives Christensen, S. Olson)

AN ACT to amend and reenact section 54-12-01 of the North Dakota Century Code, relating to mandating the attorney general to issue opinions requested by individual members of the legislative assembly.

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

**SECTION 1. AMENDMENT.** Section 54-12-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **54-12-01. Attorney general - Duties.**

The attorney general shall:

1. Appear for and represent the state before the supreme court in all cases in which the state is interested as a party.
2. Institute and prosecute all actions and proceedings in favor or for the use of the state which may be necessary in the execution of the duties of any state officer.
3. Appear and defend all actions and proceedings against any state officer in the attorney general's official capacity in any of the courts of this state or of the United States. If both parties to an action are state officers, the attorney general may determine which officer the attorney general will represent and the other officer may employ counsel to represent that other officer.
4. Consult with and advise the several state's attorneys in matters relating to the duties of their office.
5. Attend the trial of any party accused of crime and assist in the prosecution when in the attorney general's judgment the interests of the state require it.
6. Consult with and advise the governor and all other state officers and when requested give written opinions on all legal or constitutional questions relating to the duties of such officers respectively.
7. Prepare, when necessary, proper drafts for contracts and other writings relating to subjects in which the state is interested.
8. a. Give written opinions, when requested by either branch a member of the legislative assembly, upon legal questions unless the request:
  - (1) Requires the attorney general to make a factual determination;
  - (2) Involves the constitutionality of a statute;

- (3) Concerns the internal operation or management of the judicial branch of government;
  - (4) Is likely to be or presently is pending before a court or a court has ruled on the issue;
  - (5) Provides private legal advice; or
  - (6) Involves matters regarding whether a criminal offense has occurred.
  - b. If the attorney general declines to issue an opinion for a reason in subdivision a, the attorney general shall inform the individual who requested the opinion in a written response within sixty days of the request.
9. Enforce the proper application of funds appropriated to the public institutions of the state and prosecute breaches of trust in the administration of such funds.
  10. Prosecute corporations and limited liability companies, when necessary, for failure or refusal to make the reports required by law.
  11. Keep in proper books a register of all cases prosecuted or defended by the attorney general or the attorney general's assistants, in behalf of this state or its officers, and of all proceedings had in relation thereto, including a record of all actions wherein the state is a party, or is interested, prosecuted by the state's attorneys of the several counties and reported to the attorney general as provided by law, and deliver the same to the attorney general's successor in office.
  12. Keep in the attorney general's office a book in which the attorney general shall record all the official opinions given by the attorney general during the attorney general's term of office, such book to be delivered by the attorney general to the attorney general's successor in office.
  13. Pay into the state treasury all moneys received by the attorney general for the use of the state.
  14. Serve as superintendent of the bureau of criminal investigation and perform all duties incident to the proper and efficient conduct of that office.
  15. Attend to and perform any other duties which from time to time may be required by law.
  16. Appoint the state fire marshal and supervise the operation of the state fire marshal department.
  17. Give written opinions, when requested by the governing body or city attorney of a city in the state of North Dakota.
  18. Repealed by S.L. 1991, ch. 637, § 9.
  19. Give written opinions to public entities as defined in subdivision a or b of subsection 13 of section 44-04-17.1, when requested by an interested person under section 44-04-21.1.

Approved April 12, 2023

Filed April 13, 2023

## CHAPTER 472

### SENATE BILL NO. 2029

(Legislative Management)  
(Government Finance Committee)

AN ACT to amend and reenact sections 54-16-04.1 and 54-16-04.2 of the North Dakota Century Code, relating to emergency commission and budget section approval to accept and disburse federal funds and state special funds; and to declare an emergency.

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

<sup>262</sup> **SECTION 1. AMENDMENT.** Section 54-16-04.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **54-16-04.1. May authorize acceptance and disbursement of federal funds.**

1. The emergency commission, upon the advice and counsel of the office of management and budget, may authorize the state treasurer to receive any moneys not appropriated by the legislative assembly which are made available by any federal agency and which the legislative assembly has not indicated an intent to reject.
2. The emergency commission may authorize passthrough federal funds from one state agency to another state agency. A request to expend federal funds received by a state agency and passed through to any other state agency may be approved only under this section.
3. The emergency commission, with approval of the budget section of the legislative management if the amount under consideration exceeds fifty thousand dollars but does not exceed three million dollars, may authorize any state officer to receive and expend federal moneys from the date such moneys become available until June thirtieth following the next regular legislative session.
4. The emergency commission, with approval of the budget section of the legislative management if the amount under consideration exceeds three million dollars, may authorize any state officer to receive and expend federal moneys from the date such moneys become available until June thirtieth following the next regular legislative session. The budget section may approve a request under this subsection in the form received from the emergency commission or may amend and approve a request. A request amended and approved by the budget section is deemed to be approved by the emergency commission. Any request considered by the budget section must comply with section 54-35-02.9.
5. Any federal funds made available to this state which are not for a specific purpose or program and which are not required to be spent prior to the next

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<sup>262</sup> Section 54-16-04.1 was also amended by section 2 of House Bill No. 1070, chapter 331.

regular legislative session, upon the approval for acceptance by the emergency commission and the budget section of the legislative management, must be deposited into a specialseparate fund until the legislative assembly appropriates the funds.

6. a. Approval by the budget section of the legislative management is not required for the acceptance of federal funds if the acceptance is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state.
- b. Budget section approval is required under this section before the expenditure of any funds accepted under these conditions.
7. The expenditures must be consistent with state law and with the terms of the grant and the program may not commit the legislative assembly for matching funds in the future unless the program has first been approved by the legislative assembly.
8. A state officer may not expend funds received from the federal government which have not been specifically appropriated by the legislative assembly except as provided in this chapter.
9. A state officer shall submit an expenditure plan with a request for approval under this section of expenditure of federal funds combined with or as part of a block grant for a new or existing program.
10. The aggregatecumulative amount of requests to expend funds that may be approved each biennium under this section may not exceed fifty million dollars. Any request received under this section which, if approved, would result in more than fifty million dollars of funds being approved for expenditure under this section during the biennium may be approved only by the legislative assembly during a regular legislative session or during a special legislative session called by the governor. The director of the office of management and budget shall notify the members of the legislative assembly of any requests submitted which, if approved, would exceed the limit under this subsection.
11. Any request received under this section to expend funds received through a federal act that makes available to the state more than fifty million dollars ~~to the state~~ may be approved only by the legislative assembly during a regular legislative session or a special legislative session called by the governor.
12. Subsections 10 and 11 do not apply to federal highway administration emergency relief funding received by the state or to disaster or emergency recovery funding received by the state pursuant to section 37-17.1-23.

**SECTION 2. AMENDMENT.** Section 54-16-04.2 of the North Dakota Century Code is amended and reenacted as follows:

**54-16-04.2. Commission may authorize acceptance and expenditure of moneysstate special funds and other sources.**

1. Upon a finding that an emergency exists, the emergency commission, upon the advice of the office of management and budget, with approval of the budget section of the legislative management if the amount under consideration exceeds fifty thousand dollars but does not exceed three million dollars, may authorize a state officer to receive and expend moneys from gifts,

grants, donations, or other sources, not otherwise appropriated by the legislative assembly, for new or existing programs if the legislative assembly has not indicated an intent to reject the moneys or the program.

2. Upon a finding that an emergency exists, the emergency commission, upon the advice of the office of management and budget, with approval of the budget section of the legislative management if the amount under consideration exceeds three million dollars, may authorize a state officer to receive and expend moneys from gifts, grants, donations, or other sources, not otherwise appropriated by the legislative assembly, for new or existing programs if the legislative assembly has not indicated an intent to reject the moneys or the program. The budget section may approve a request under this subsection in the form received from the emergency commission or may amend and approve a request. A request amended and approved by the budget section is deemed to be approved by the emergency commission. Any request considered by the budget section must comply with section 54-35-02.9.
3. A state officer receiving authorization to expend money under this section may expend the money from the date the money becomes available until June thirtieth following the next regular legislative session. Approval by the budget section of the legislative management is not required for the acceptance of moneys under this section if the acceptance is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state. Budget section approval is required before the expenditure of any funds accepted under these conditions.
4. The ~~aggregate~~cumulative amount of requests to expend funds which may be approved each biennium under this section may not exceed ~~five~~twenty million dollars. Any request received under this section which, if approved, would result in more than ~~five~~twenty million dollars being approved for expenditures under this section during the biennium may be approved only by the legislative assembly during a regular legislative session or during a special legislative session called by the governor. The director of the office of management and budget shall notify the members of the legislative assembly of any requests submitted which, if approved, would exceed the limit under this subsection.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 26, 2023

Filed April 26, 2023

## CHAPTER 473

### HOUSE BILL NO. 1062

(Energy and Natural Resources Committee)  
(At the request of the Industrial Commission)

AN ACT to amend and reenact section 54-17-03, subsection 8 of section 54-17-07.3, section 54-17-07.9, and subsection 2 of section 54-63-03 of the North Dakota Century Code, relating to updating position titles, clarification for mortgage insurance requirements, execution of instruments, and industrial commission powers.

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

**SECTION 1. AMENDMENT.** Section 54-17-03 of the North Dakota Century Code is amended and reenacted as follows:

##### **54-17-03. Chairman and attorney - Secretary - Employees - Compensation - Bonds.**

The governor is the chairman of the industrial commission, and its attorney is the attorney general. The commission shall appoint a ~~secretary~~ executive director and may employ other subordinate officers, employees, and agents, on such terms as the commission determines proper. The commission may require suitable bonds of its ~~secretary~~ executive director or other subordinate officers, employees, or agents. The commission shall fix the amount of the compensation of the commission's ~~secretary~~ executive director, officers, employees, and agents and ~~the secretary's salary may exceed the maximum salary in the grade established for the classification assigned under chapter 54-44-3.~~ The compensation, together with other expenditures for operation and maintenance of the general business of the commission, must remain within the appropriation available in each year for such purpose. The commission may set the compensation, within the limits of legislative appropriation, for members of a board, committee, or council that advises the commission. Notwithstanding any other provision of law, the compensation for any board, committee, or council member may include reimbursement for expenses, a salary, a per diem, or a combination of the three, as set by the commission.

**SECTION 2. AMENDMENT.** Subsection 8 of section 54-17-07.3 of the North Dakota Century Code is amended and reenacted as follows:

8. The housing finance agency may purchase, service, and sell residential real estate loans secured by a first mortgage lien on real property originated by financial institutions. The loans may be held in the agency's portfolio or sold on the secondary market with servicing retained. ~~All loans with a loan-to-value ratio exceeding eighty percent and not guaranteed by a federal agency must be insured by an approved mortgage insurance company.~~

**SECTION 3. AMENDMENT.** Section 54-17-07.9 of the North Dakota Century Code is amended and reenacted as follows:

##### **54-17-07.9. Execution of instruments.**

In the absence of any provision regulating the execution and acknowledgment of conveyances, transfers, assignments, releases, satisfactions, or other instruments affecting liens on, title to, or interest in real estate, the executive director or ~~the director of financial programs~~ other staff as designated by the executive director, may execute and acknowledge such instruments on behalf of the industrial commission acting as the North Dakota housing finance agency.

**SECTION 4. AMENDMENT.** Subsection 2 of section 54-63-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The industrial commission ~~shall~~may contract with the department of commerce to provide technical assistance to the renewable energy council and the industrial commission to carry out and effectuate the purposes of this chapter, including pursuit of aid, grants, or contributions of money or other things of value from any source for any purpose consistent with this chapter. The department may contract with a public or private third party to provide any or all of the technical assistance necessary to implement the purposes of this chapter.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 474

### SENATE BILL NO. 2089

(Finance and Taxation Committee)  
(At the request of the Department of Mineral Resources)

AN ACT to create and enact section 54-17.6-06.1 of the North Dakota Century Code, relating to clean natural gas capture and emissions reduction; and to designate funding from the oil and gas research fund.

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

**SECTION 1.** Section 54-17.6-06.1 of the North Dakota Century Code is created and enacted as follows:

##### **54-17.6-06.1. Clean natural gas capture and emissions reduction program.**

1. The clean natural gas capture and emissions reduction program shall provide an incentive for natural gas capture and utilization systems on an oil or gas well site or gathering pipeline facility which collect or utilizes over fifty percent of propane and heavier hydrocarbons from an oil and gas well site for beneficial use by:
  - a. Compressing or liquefying gas for artificial lift, uses as fuel, or for nonpipeline transport to a processing facility;
  - b. Conversion to liquid fuels;
  - c. Conversion to electricity for onsite use or supply to the electrical grid;
  - d. Conversion to computational power;
  - e. Collection of tank vapors for beneficial use or transport to a processing facility;
  - f. Temporary gas injection into producing wells in lieu of flaring or shutting in wells; or
  - g. Other value-added processes as approved by the industrial commission.
2. The commission is granted all the powers necessary and appropriate to effectuate the provisions of this section.
3. The commission:
  - a. May make grants or loans or provide other forms of financial assistance as necessary or appropriate to qualified entities for activities under subsection 1;
  - b. Shall keep accurate records of all financial transactions performed under this section;

- c. May accept donations, grants, federal funds, contributions, and gifts from any public or private source and deposit such in the oil and gas research fund;
- d. May make and explore orders, rules, and policies necessary to effectuate the purpose of this section; and
- e. Shall consult with the council in matters of policy affecting the administration of the clean natural gas capture and emissions reduction program.

**SECTION 2. OIL AND GAS RESEARCH FUND - CLEAN NATURAL GAS CAPTURE AND EMISSIONS REDUCTION PROGRAM - ONE-TIME FUNDING.**

Pursuant to the continuing appropriation under section 57-51.1-07.3, the industrial commission shall use up to \$3,000,000 from the oil and gas research fund for the clean natural gas capture and emissions reduction program under section 54-17.6-06.1 for the biennium beginning July 1, 2023, and ending June 30, 2025. The designation under this section is considered a one-time funding item.

Approved April 29, 2023

Filed May 1, 2023

## CHAPTER 475

### SENATE BILL NO. 2054

(Transportation Committee)  
(At the request of the Highway Patrol)

AN ACT to amend and reenact sections 39-03-09 and 54-21-17.1 of the North Dakota Century Code, relating to powers of the highway patrol.

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

**SECTION 1. AMENDMENT.** Section 39-03-09 of the North Dakota Century Code is amended and reenacted as follows:

##### **39-03-09. Powers of highway patrol.**

The superintendent and each member of the highway patrol shall have the power:

1. Of a peace officer for the purpose of enforcing the provisions of this title relating to operators' licenses, the provisions of title 24 relating to highways, and of any other law regulating the operation of vehicles or the use of the highways, and in addition the highway patrol shall enforce all laws relating to the use or presence of alcoholic beverages in motor vehicles.
2. To make arrests upon view and without warrant for any violation committed in the person's presence of any of the provisions of this title relating to operators' licenses, or of title 24 relating to highways or to other laws regulating the operation of vehicles or the use of the highways.
3. To direct traffic in conformance with law, or, in case of fire or emergency and to expedite traffic, or, to ensure safety by directing traffic as conditions may require notwithstanding the provisions of law.
4. To facilitate compliance with the provisions of this title, to require the driver of a vehicle to stop and exhibit the driver's operator's license and the registration cards issued for the vehicle, if any are required, and to submit to an inspection and test of the equipment of such vehicle.
5. For the purpose of locating stolen vehicles and to investigate the title and registration thereof, to inspect any vehicle of a type required to be registered under the provisions of this title, in any public garage or repair shop, or in any place where such vehicles are held for sale or wrecking.
6. To serve all warrants relating to the enforcement of the laws regulating the operation of vehicles or the use of the highways.
7. To investigate traffic accidents and secure testimony of witnesses or of persons involved.
8. To investigate reported thefts of motor vehicles, trailers, or semitrailers.
9. To take applications for operators' licenses without making a charge therefor.

10. To enforce all laws, rules, or regulations of the state of North Dakota pertaining to the closing hours of all businesses or establishments selling alcoholic beverages outside the limits of incorporated cities of this state.
11. ~~To exercise general police powers~~Of a peace officer over all violations of law committed on state owned or leased property.
12. ~~To exercise general police powers~~Of a peace officer over all violations of law committed in their presence or when in pursuit of any actual or suspected law violator.
13. To require a motor carrier owner, or a motor carrier's agent, affected by rules adopted under chapter 39-21 to produce logs or other documents to determine compliance with rules adopted under chapter 39-21.
14. ~~To provide~~Of a peace officer when providing security and protection for the governor, the governor's immediate family, and other officers next in order of succession to the office of governor ~~to the extent and in a manner the governor and the superintendent deemas deemed~~ adequate and appropriate by the superintendent.
15. ~~To provide~~Of a peace officer when providing security and protection for ~~both~~ members of the legislative assembly ~~while in session as in the opinion of the speaker of the house, the president of the senate, and the superintendent~~ areas deemed adequate and appropriate by the superintendent.
16. Of a peace officer when responding to a call for emergency assistance requiring an immediate response. Following a call for emergency assistance which occurs outside state-owned or state-leased property, a highway, or the highway right of way, notification must be provided to the local law enforcement agency having primary jurisdiction.
17. To promote public trust and an understanding of law enforcement through education, community outreach, and job shadowing programs.
18. ~~To exercise general police powers~~Of a peace officer over any violation of law committed on public or private property when requested by another law enforcement agency.
19. Of a peace officer when providing security and protection for visiting dignitaries at the request of another law enforcement agency or the governor. The highway patrol may request the assistance of other law enforcement agencies with security and protection, and the other law enforcement agencies may provide the assistance as requested under this section.

**SECTION 2. AMENDMENT.** Section 54-21-17.1 of the North Dakota Century Code is amended and reenacted as follows:

**54-21-17.1. Superintendent to secure interior of capitol building, capitol grounds, and executive mansion - Issuance and return of keys and electronic card access.**

1. The superintendent of the highway patrol shall see to the security of the state capitol building, capitol grounds, and executive mansion. The superintendent shall have control over the issuance and return of keys and electronic card

~~access allowing entry to the building proper, or any door located therein. Keys to doors in the legislative wing must be issued and controlled by the legislative council when so requested by the highway patrol exterior doors of the state capitol building. The superintendent shall have control over electronic card access for the interior doors of the state capitol building. Keys to interior doors of the state capitol building must be controlled by individual agency heads and requested through the office of management and budget. The highway patrol shall determine the manner in which keys to the exterior doors of the state capitol building are to be issued and returned, including the procedure for receiving and recording the payment of fees in lieu of return of keys provided in section 54-06-15 and the manner in which electronic card access for interior and exterior doors is granted or removed.~~

- ~~2. The legislative council may issue keys and grant electronic card access for interior doors in areas controlled by the legislative branch.~~
- ~~3. The superintendent may adopt rules and procedures for the immediate lock-down and closure of the capitol building and executive mansion to promote safety during times of emergency.~~

Approved April 18, 2023

Filed April 19, 2023

## CHAPTER 476

### HOUSE BILL NO. 1066

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

AN ACT to create and enact a new section to chapter 54-23.3 of the North Dakota Century Code, relating to job shadowing with the department of corrections and rehabilitation.

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

**SECTION 1.** A new section to chapter 54-23.3 of the North Dakota Century Code is created and enacted as follows:

##### **Job shadowing.**

For purposes of education and community outreach and to promote public trust, the director of the department of corrections and rehabilitation may permit a nonmember of the department of corrections and rehabilitation to participate in job shadowing activities, including:

1. Participating in a ride-along program with a member of the department of corrections and rehabilitation while on duty;
2. Discharging a firearm owned and used by the department of corrections and rehabilitation while at a training facility and under the supervision of a member of the department of corrections and rehabilitation; and
3. Shadowing any member of the department of corrections and rehabilitation while on duty.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 477

### SENATE BILL NO. 2050

(State and Local Government Committee)  
(At the request of the State Library)

AN ACT to create and enact a new section to chapter 54-24.2 of the North Dakota Century Code, relating to the ability of the state librarian to recalculate grant payments to public libraries; to amend and reenact sections 40-38-09, 54-24-09, 54-24.2-03, and 54-24.4-05 of the North Dakota Century Code, relating to the public annual report, distribution of state publications to libraries, the computation of mill levies, and the duties of the library coordinating council; to repeal sections 40-38-10 and 54-24.2-02.2 of the North Dakota Century Code, relating to a political subdivision's ability to establish a library without an election and local maintenance efforts of public libraries; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 40-38-09 of the North Dakota Century Code is amended and reenacted as follows:

##### **40-38-09. Annual report of board of directors - Contents - To whom made.**

The board of directors shall make a report ~~on~~by July first of each year to the governing body of the city or board of county commissioners, as the case may be, stating:

1. The condition of the library and property.
2. The various sums of money received from all sources.
3. How much money has been expended and for what purpose.
4. The number of ~~books and periodicals~~library materials on hand.
5. The number of ~~books and periodicals~~library materials added by purchase or gift during the year and the number thereof, withdrawn or lost or, and number of materials loaned out.
6. The ~~character and kind of books~~type of library materials contained in the library.
7. Such other statistics, information, and suggestions as the board may deem of general interest or as may be required by the state library.

Copies of the report shall be filed with the governing body of the political subdivision and with the state library.

**SECTION 2. AMENDMENT.** Section 54-24-09 of the North Dakota Century Code is amended and reenacted as follows:

**54-24-09. Distribution of certain state publications for certain libraries required.**

The office of management and budget shall arrange to deposit with the state library eight copies of all publications issued by all executive, legislative, and judicial agencies of state government intended for general public distribution. These publications must be provided to the state library without charge. If expense and limited supply of state publications, particularly audiovisual items, make compliance with the depository requirement impossible, the state library shall accept as many copies as an agency can afford to provide. However, each agency shall provide no less than two copies to the state library. State publications refer to any informational materials regardless of format, method of reproduction, or source, originating in or produced with the imprint of, by the authority of, or at the total or partial expense of, any state agency. The definition incorporates those publications that may or may not be financed by state funds but are released by private bodies such as research and consultant firms under contract with or supervision of any state agency. In circumstances not directly involving the office of management and budget, a state agency shall comply with the depository requirement by arranging with the necessary parties for the printing and deposit of eight copies of any state publication issued. State publications are specifically defined as public documents appearing as reports, directories, statistical compendiums, bibliographies, laws or bills, rules, regulations, newsletters, bulletins, state plans, brochures, periodicals, committee minutes, transcripts of public hearings, other printed matter, audiotapes, videotapes, films, filmstrips, or slides, but not those administrative or training materials used only within the issuing agency. As the document acquisition and distribution agency, the state library shall retain for its document collection two copies of every state document received and transmit the remaining copies to the depository libraries. These are the libraries of the state historical society, the university of North Dakota, North Dakota state university, library of Congress, and two others to be designated by the state library. ~~All nondepository North Dakota libraries may receive state documents under an optional selection program developed by the state library. The state library shall catalog state publications and arrange for their conversion to microfilm or to optical disk storage a digital format as prescribed by the state records administrator and shall make available for distribution of the same upon request to the designated depository libraries.~~

**SECTION 3.** A new section to chapter 54-24.2 of the North Dakota Century Code is created and enacted as follows:

**Calculation of payment - Expenditures.**

The state librarian may recalculate and adjust each eligible public library grant formula based on a successful appeal by a public library determined to be ineligible. Within thirty days after notification from the state librarian of a public library's ineligibility to receive grant funds, the ineligible public library shall submit the appeal. The state librarian shall apply the difference between the initial calculated grant formula and the recalculated grant formula to the next available grant formula payment.

**SECTION 4. AMENDMENT.** Section 54-24.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-24.2-03. Incentive for local funding.**

To provide for increased local funding, public libraries eligible to receive funds under section 54-24.2-02 shall have the funds allocated to them modified in accordance with the following formula:

Cities levying

8.00 or more mills	150 percent of allocation
6.00 - 7.99 mills	125 percent of allocation
4.00 - 5.99 mills	100 percent of allocation
3.00 - 3.99 mills	75 percent of allocation
2.00 - 2.99 mills	50 percent of allocation
1.00 - 1.99 mills	33 percent of allocation
0.01 - 0.99 mills	25 percent of allocation
0.00 - mills	0 percent of allocation

Counties levying

4.00 or more mills	150 percent of allocation
3.00 - 3.99 mills	125 percent of allocation
2.00 - 2.99 mills	100 percent of allocation
1.50 - 1.99 mills	75 percent of allocation
1.00 - 1.49 mills	50 percent of allocation
0.50 - 0.99 mills	33 percent of allocation
0.01 - 0.49 mills	25 percent of allocation
0.00 - mills	0 percent of allocation

~~The computation of mills must be based upon the levy on the taxable valuation and the mill levy equivalent of other public funds received and deposited in the library fund for the operation of the library by the governing body during the preceding fiscal year as certified by the auditor of the city or county operating the library;~~

1. The levy on the taxable valuation as certified by the county auditor to the tax commissioner. By May fifteenth of each year the tax commissioner shall provide the state library the certified taxable valuations;
2. The other public funds received and deposited in the library fund for the operation of the library by the governing body during the preceding fiscal year; and
3. Computation of the mill levy equivalent of other public funds as computed by the state library.

**SECTION 5. AMENDMENT.** Section 54-24.4-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-24.4-05. North Dakota library coordinating council - Duties.**

The North Dakota library coordinating council shall:

1. Assist in planning, coordinating, and evaluating the services and programs of libraries in the state.
2. ~~Serve as the state advisory council on libraries as required by Public Law No. 101-254.~~
3. Approve the distribution of grants to libraries, except for grants distributed under chapter 54-24.2.
- 4-3. Facilitate the development of a comprehensive statewide online library catalog, promote statewide resource sharing, and encourage electronic networking among all types of libraries.
- 5-4. Strengthen the state library in its role of coordinating and enriching library service in the state.
- 6-5. Support and strengthen library cooperative ventures, including consortia, regional associations, and partnerships, in their role of extending and improving library services in the state.
- 7-6. Promote equitable access to information resources and library services to persons throughout the state.
- 8-7. Promote the services of libraries and librarians.
- 9-8. Take action necessary to carry out chapter 54-24.3 and this chapter.

**SECTION 6. REPEAL.** Section 40-38-10 of the North Dakota Century Code is repealed.

**SECTION 7. REPEAL.** Section 54-24.2-02.2 of the North Dakota Century Code is repealed.

**SECTION 8. EFFECTIVE DATE.** Sections 3, 4, and 7 of this Act become effective on May 15, 2023.

Approved March 27, 2023

Filed March 28, 2023

## **CHAPTER 478**

### **HOUSE BILL NO. 1214**

(Representative Nathe)

AN ACT to repeal section 54-34.3-13 of the North Dakota Century Code, relating to department of commerce rural growth incentive program.

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

**SECTION 1. REPEAL.** Section 54-34.3-13 of the North Dakota Century Code is repealed.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 479

### HOUSE BILL NO. 1539

(Representatives Weisz, Lefor, M. Ruby, Vigesaa)  
(Approved by the Delayed Bills Committee)

AN ACT to amend and reenact section 54-35-02.4 of the North Dakota Century Code, relating to duties of the employee benefits programs committee.

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

**SECTION 1. 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~~During each interim, the employee benefits programs committee shall consider and report on ~~those~~the legislative measures and proposals over which ~~it~~the committee takes jurisdiction and which affect, ~~actuarially or otherwise, fiscally~~ impact 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. A majority of the members of the committee has sole authority to determine whether a legislative proposal affects a program. The committee shall make a thorough review of ~~any measure or each~~ proposal which ~~it~~the committee takes under its jurisdiction, including an actuarial ~~review~~report. The committee shall take jurisdiction over ~~any measure or a~~ proposal that authorizes an automatic increase or other change in benefits beyond the ensuing biennium which would not require legislative approval. The committee ~~must~~shall include in the report of the committee a statement that the proposal would allow future changes without legislative involvement. The committee shall report ~~its~~the findings and recommendations of the committee, along with any necessary legislation, to the legislative management and to the legislative assembly.
2. To carry out ~~its~~the responsibilities of the committee, the committee, or ~~its~~the designee of the committee, may:
  - a. Enter 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~~the program's retirement, insurance, or retiree health benefits fund, as appropriate, and without the need for a prior appropriation, the cost of ~~any~~an actuarial report required ~~by the committee~~under this section 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 may request.
  - c. Establish rules for ~~its~~the operation of the committee, including the submission and review of proposals and the establishing of standards for actuarial ~~review~~reports.

3. The committee may solicit draft measures and proposals from interested persons during the interim between legislative sessions, and may also may study measures and proposals referred to ~~it~~the committee by the legislative assembly or the legislative management.
4. A copy of the committee's report concerning ~~anya~~ legislative measure ~~shall~~, if that measure is introduced for consideration by a legislative assembly, must be appended to the copy of that measure ~~which is referred to a standing committee.~~
5. ~~Alf a~~ legislative measure affecting a public employees retirement program, public employees health insurance program, or public employee retiree health insurance program ~~may not be~~is introduced in either house ~~unless it is accompanied by~~without a report from the committee, ~~the chairman and vice chairman of the employee benefits programs committee shall request an actuarial report from the program affected and shall provide the report to the standing committee to which the measure is referred. A majority of the members of the committee, acting through the~~During the legislative session, the employee benefits programs committee chairman, has and vice chairman, working together, have sole authority to determine whether ~~any~~any legislative measure or amendment affects a program under this subsection and subsection 6.
6. ~~Any~~During a legislative session, if an amendment is made ~~during a legislative session~~ to a legislative measure ~~affecting~~which fiscally impacts 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 chairman and vice chairman shall request from the affected program an actuarial report on the amendment and shall provide the report to the standing committee to which the bill is referred.
7. ~~Any legislation~~Legislation enacted in contravention of this section is invalid ~~and of no force and effect, and any benefits provided under such~~the legislation must be reduced to the level current ~~prior to~~before enactment of the legislation.

Approved May 8, 2023

Filed May 9, 2023

## CHAPTER 480

### HOUSE BILL NO. 1313

(Representatives Kasper, Bellew, Bosch, Lefor, Monson, D. Ruby, Vigesaa)  
(Senators Bekkedahl, Hogue, Klein, Kreun, Meyer)

AN ACT to amend and reenact section 54-35-06 of the North Dakota Century Code, relating to the chairman and vice chairman of the legislative management; to provide for application; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 54-35-06 of the North Dakota Century Code is amended and reenacted as follows:

##### **54-35-06. Officers - Accept funds - Expenditures.**

1. The legislative management shall select a chairman must be the majority leader of one house of the legislative assembly, or the majority leader's designee, and at the vice chairman from its own members and must be the majority leader of the opposite house of the legislative assembly, or the majority leader's designee. The legislative management may prescribe its own rules of procedure.
2. The legislative management chairman shall serve a two-year term beginning at the adjournment of each regular legislative session. The chairman may not be a member of the same house of the legislative assembly for consecutive terms. The vice chairman may not be a member of the same house of the legislative assembly as the chairman.
3. 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 legislative council and who must be paid such. The director is entitled to a salary asset by the legislative management may determine. The director may employ such persons and obtain the assistance of such research agencies as determined necessary. The director may use available funds for salary adjustments to assist with staff recruitment, retention, and recognition of exceptional performance. The legislative management and the legislative council may accept and use any funds made available through the terms of any agreement made with any agency whatsoever for the accomplishment of the purpose of this chapter. Expenditures of funds made available by legislative appropriation must be made in accordance with rules or motions duly approved by the legislative management.

**SECTION 2. APPLICATION.** The chairman of the legislative management beginning at the adjournment of the 2023 legislative session must be the majority leader of the house of representatives.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved May 8, 2023

Filed May 9, 2023

## CHAPTER 481

### HOUSE BILL NO. 1159

(Representatives Bosch, Kempenich, Mock, Toman, Weisz)  
(Senators Conley, Davison)

AN ACT to amend and reenact subsection 13 of section 54-35-15.2 and sections 54-59-09 and 54-59-23 of the North Dakota Century Code, relating to the duties of the information technology committee and the state information technology advisory committee; and to repeal sections 54-59-02.1 and 54-59-07 of the North Dakota Century Code, relating to the state information technology advisory committee.

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

**SECTION 1. AMENDMENT.** Subsection 13 of section 54-35-15.2 of the North Dakota Century Code is amended and reenacted as follows:

13. Receive a report from the chief information officer before October first of each even-numbered year regarding ~~the recommendations of the state information technology advisory committee relating to the prioritization of proposed major information technology projects and other information technology issues for~~ the next biennium.

**SECTION 2. AMENDMENT.** Section 54-59-09 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-59-09. Information technology standards.**

Based on information from state agencies and institutions, the department and the office of management and budget shall develop statewide information technology policies, standards, and guidelines. The policies, standards, and guidelines must recognize the uniqueness of certain agencies and state which agencies are included or exempted from the policies, standards, and guidelines. ~~The policies, standards, and guidelines must be reviewed by the state information technology advisory committee.~~ Each executive branch state agency and institution, excluding the institutions under the control of the board of higher education, shall comply with the policies and standards developed by the department and the office of management and budget unless the chief information officer exempts an agency from the policies, standards, and guidelines to address situations unique to that agency. Unless an exemption is granted by the chief information officer, each entity receiving wide area network services provided by the department shall comply with the policies and standards developed by the department with respect to access to or use of wide area network services.

**SECTION 3. 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~~department before September first of each even-numbered year regarding the plan for and status of any information technology project that is estimated to cost more than five hundred thousand dollars.

2. During the life of the project, the agency shall notify the ~~state information technology advisory committee~~department 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 management's information technology committee regarding the project.
4. Upon completion of the project, the agency shall notify the ~~state information technology advisory committee~~department 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.

**SECTION 4. REPEAL.** Sections 54-59-02.1 and 54-59-07 of the North Dakota Century Code are repealed.

Approved March 22, 2023

Filed March 23, 2023

## CHAPTER 482

### SENATE BILL NO. 2289

(Senators Patten, Bekkedahl, Kannianen, Kessel)  
(Representatives Bosch, Porter)

AN ACT to amend and reenact section 54-35-18 of the North Dakota Century Code, relating to the energy development and transmission committee.

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

**SECTION 1. AMENDMENT.** Section 54-35-18 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-35-18. Energy development and transmission committee.**

1. The legislative management, during each biennium, shall appoint an energy development and transmission committee in the same manner as the legislative management appoints other interim committees.
2. The 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 management shall designate the chairman of the committee.
3. The committee shall operate according to the statutes and procedure governing the operation of other legislative management interim committees.
4. 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.
5. The committee shall develop a comprehensive statewide energy policy that supports the long-term development of the energy opportunities available in the state and seeks solutions for the challenges realized through the successful development of energy opportunities. The committee shall engage industry stakeholders to develop a regulatory environment that allows for responsible growth while resolving conflicts and developing synergy between energy and agriculture programs.
6. The study may include the review of and recommendations relating to policy affecting extraction, generation, processing, transmission, transportation, marketing, distribution, and use of energy.

Approved April 4, 2023

Filed April 5, 2023

## CHAPTER 483

### HOUSE BILL NO. 1081

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to provide for a department of transportation electronic vehicle charging tax study; and to provide for a legislative management report.

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

**SECTION 1. DEPARTMENT OF TRANSPORTATION ELECTRONIC VEHICLE CHARGING TAX STUDY - REPORT TO LEGISLATIVE MANAGEMENT.**

1. During the 2023-24 interim, the department of transportation in consultation with the tax department, and the public service commission, shall study the feasibility and impact of an electronic vehicle charging tax to offset lost revenue from gas tax sales, that would otherwise be appropriated to the department of transportation, by out-of-state drivers when using roads within the state of North Dakota. The study must include:
  - a. An assessment of lost revenue due to out-of-state drivers using the roads but not paying a gas tax due to the vehicles being electronically charged;
  - b. An evaluation of the economic impact of lost revenue as well as implementation of an electronic charging tax that would be equivalent to the lost gas tax revenue; and
  - c. An assessment of the costs and implementation of such a tax.
2. Before August 1, 2024, the department of transportation shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the legislative management.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 484

### HOUSE BILL NO. 1026

(Legislative Management)  
(Acute Psychiatric Treatment Committee)

AN ACT to provide for a legislative management study regarding the implementation of behavioral health and acute psychiatric treatment recommendations.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - IMPLEMENTATION OF BEHAVIORAL HEALTH AND ACUTE PSYCHIATRIC TREATMENT RECOMMENDATIONS.** During the 2023-24 interim, the legislative management shall consider studying the implementation of the recommendations of the 2018 North Dakota behavioral health system study conducted by the human services research institute and the 2022 acute psychiatric and residential care needs study conducted by Renee Schulte consulting, llc. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 485

### HOUSE BILL NO. 1149

(Representatives Thomas, Dockter, Heinert, Kasper, Porter, D. Ruby, Vetter)  
(Senators Patten, Paulson)

AN ACT to provide for a legislative management study regarding the impact of the North Dakota high school activities association on students.

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

#### **SECTION 1. LEGISLATIVE MANAGEMENT STUDY - IMPACT OF NORTH DAKOTA HIGH SCHOOL ACTIVITIES ASSOCIATION.**

1. During the 2023-24 interim, the legislative management shall consider studying the impact of the North Dakota high school activities association on students.
2. The study may include a review of the:
  - a. Makeup of the board of the association.
  - b. Association's bylaws and policies, including eligibility and transfer rules.
  - c. Role of the state as it relates to the association's performance of a quasi-governmental function.
3. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly.

Approved March 30, 2023

Filed April 3, 2023

## CHAPTER 486

### HOUSE BILL NO. 1195

(Representatives Klemin, Hanson, Roers Jones)  
(Senators Braunberger, Larson)

AN ACT to provide for a legislative management study regarding a juvenile delinquency offense code.

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

**SECTION 1. JUVENILE JUSTICE STUDY - JUVENILE DELINQUENCY OFFENSE CODE - REPORT.** During the 2023-24 interim, the legislative management, in collaboration with the commission on juvenile justice, shall study the criminal code to ensure equitable application to youths charged with juvenile delinquencies. The study must include consideration of the desirability and feasibility of a separate juvenile delinquency offense code, whether a separate and unique classification of criminal offenses for juveniles should be created, and which criminal offenses should receive a distinct classification for juvenile offenders, if any. In conducting the study, the legislative management and the commission on juvenile justice may seek technical assistance, as appropriate, from the council of state governments' justice center. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

Approved March 30, 2023

Filed April 3, 2023

## CHAPTER 487

### HOUSE BILL NO. 1247

(Representatives Grueneich, Brandenburg, Dockter, Heinert, Kempenich, Mitskog,  
Monson, J. Olson, Satrom, Weisz)  
(Senators Erbele, Myrdal)

AN ACT to provide for a legislative management study regarding the impact of a property tax exemption for agricultural products storage.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - PROPERTY TAX EXEMPTION FOR AGRICULTURAL PRODUCTS STORAGE.** During the 2023-24 interim, the legislative management shall study the provision of a property tax exemption for elevators, warehouses, and other farm structures classified as commercial property, which are privately owned and used to store agricultural products produced by the owner or an individual related to the owner as defined in section 10-06.1-12. The study must include consideration of the potential shift in property tax burden if the exemption were to be enacted, the definitions of agricultural property and farm plant as used in subsection 15 of section 57-02-08, and the impact of abandoned elevators, potato warehouses, and other farm structures classified as commercial property on the political subdivisions in which they are located, including the cost of refurbishment or removal. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

Approved March 20, 2023

Filed March 21, 2023

## CHAPTER 488

### HOUSE BILL NO. 1341

(Representatives Koppelman, Meier, M. Ruby, Steiner, VanWinkle)  
(Senators Clemens, Meyer, Myrdal, Paulson, K. Roers)

AN ACT to provide for a legislative management study relating to statutory provisions that restrict the location and manner in which firearms and dangerous weapons may be carried.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - FIREARM AND DANGEROUS WEAPONS RESTRICTIONS.** During the 2023-24 interim, the legislative management shall study those provisions of the North Dakota Century Code that place restrictions on carrying firearms and dangerous weapons. The study must include an examination of the state's current firearm and weapon possession prohibitions as compared to the nation's historical regulations and restrictions on the time, place, and manner in which firearms and dangerous weapons may be restricted. The study must include an assessment of recent federal court cases relating to firearm restrictions, including public carry, and an examination of the definition of a dangerous weapon and whether the current definition of a dangerous weapon should be maintained, narrowed, or expanded. The study must include input from the attorney general, the superintendent of public instruction, a representative of the university system, and representatives of the supreme court, the association of counties, the league of cities, the state's attorney association, the commission on legal counsel for indigents, the peace officers association, and an association or organization with an interest in firearm legislation. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly.

Approved April 29, 2023

Filed May 1, 2023

## CHAPTER 489

### HOUSE BILL NO. 1375

(Representatives Fisher, Christensen, Karls, McLeod, O'Brien, S. Olson, Prichard,  
Sanford, Schreiber-Beck)  
(Senators Burckhard, Myrdal, Wanzek)

AN ACT to provide an appropriation to the department of health and human services to reimburse child-placing agencies for the costs of home study reports.

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

**SECTION 1. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES - CHILD-PLACING AGENCIES.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$262,000, or so much of the sum as may be necessary, to the department of health and human services for the purpose of reimbursing nonprofit child-placing agencies for the costs of completing home study reports under chapter 50-12, for the biennium beginning July 1, 2023, and ending June 30, 2025.

Approved April 6, 2023

Filed April 10, 2023

## CHAPTER 490

### HOUSE BILL NO. 1413

(Representatives Karls, Kiefert, Rohr, Satrom, Steiner)  
(Senator Dever)

AN ACT to provide for a legislative management study relating to accumulator adjustment programs.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - ACCUMULATOR ADJUSTMENT PROGRAM BANS.** During the 2023-24 interim, the legislative management shall consider studying the impact of third-party payments and accumulator adjustment programs on North Dakota patients' out-of-pocket costs, medications adherence, and health care systems costs and impacts. The study shall assess health benefit participants' usage and prevalence of third-party payments in North Dakota. The study shall also review data from states with accumulator adjustment program bans since 2019 and shall seek input from all relevant stakeholders in the health care industry. The legislative management shall report its findings and recommendations, together with any proposed legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

Approved May 4, 2023

Filed May 5, 2023

## CHAPTER 491

### HOUSE BILL NO. 1476

(Representatives Mitskog, Kreidt)

AN ACT to provide for a legislative management study of contract nursing agencies.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - CONTRACT NURSING AGENCIES.** During the 2023-24 interim, the legislative management shall consider studying the impact of entities that receive Medicaid and Medicaid expansion funding utilizing contract nursing agencies. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

Approved March 30, 2023

Filed April 3, 2023

## CHAPTER 492

### HOUSE BILL NO. 1512

(Representatives Novak, Fisher, Heinert, Koppelman, Strinden)  
(Senators Beard, Boehm, Kessel, Magrum, Patten)

AN ACT to provide for a legislative management study relating to statutory provisions governing certification of site compatibility for electric energy conversion facilities.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - ELECTRIC ENERGY CONVERSION FACILITIES - SITE COMPATIBILITY.** During the 2023-24 interim, the legislative management shall consider studying statutory provisions governing certification of site compatibility for electric energy conversion facilities. The study must include a review of the provisions of the North Dakota Century Code that allow the North Dakota public service commission to issue a certificate of site compatibility for electric energy conversion facilities, the certification process for site compatibility for electric energy conversion facilities, and the impact of certifying site compatibility of electric energy conversion facilities in conjunction with subsurface minerals rights for mineral owners or mineral lessees. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly.

Approved April 6, 2023

Filed April 10, 2023

## CHAPTER 493

### HOUSE BILL NO. 1529

(Representatives Prichard, Bahl, Hoverson, J. Johnson, Koppelman, McLeod, Vetter)  
(Senators Barta, Braunberger, Estenson, Magrum)

AN ACT to provide for a legislative management study relating to campaign finance.

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

##### **SECTION 1. LEGISLATIVE MANAGEMENT STUDY - STATE ELECTIONS LAW.**

During the 2023-24 interim, the legislative management shall consider studying the provisions of chapter 16.1-08.1 related to campaign contribution statements for purposes of eliminating duplicative provisions, clarifying inconsistent or unclear provisions, pursuing uniformity for required contribution and expenditure reports, and rearranging provisions in a logical order. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

Approved April 12, 2023

Filed April 13, 2023

## CHAPTER 494

### SENATE BILL NO. 2101

(Energy and Natural Resources Committee)  
(At the request of the Department of Environmental Quality)

AN ACT to provide for a legislative management study of petroleum products and antifreeze regulations.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - PETROLEUM PRODUCTS AND ANTIFREEZE REGULATIONS.** During the 2023-24 interim, the legislative management shall consider studying the state's regulation of petroleum products and antifreeze and the relevance of these regulations. The study must include North Dakota Century Code chapters 23.1-13 on petroleum products and 23.1-14 on antifreeze regulation, the legislative history of these chapters, any other current regulations on petroleum products and antifreeze related to these chapters, and input from interested agencies and industries, including the department of environmental quality. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 495

### SENATE BILL NO. 2122

(Senator Beard)

AN ACT to provide for a legislative management study relating to the workforce training center funding distribution model.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - WORKFORCE TRAINING CENTER FUNDING DISTRIBUTION MODEL.** During the 2023-24 interim, the legislative management shall study the workforce training center funding distribution model. The study must include the funding distribution model, statewide integration and alignment across workforce training centers, and awarding college credit for workforce training center offered training. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 496

### SENATE BILL NO. 2158

(Senators Lee, Dever, Hogan)  
(Representatives Dobervich, Rohr, Weisz)

AN ACT to provide for a legislative management study of the comprehensive health association of North Dakota.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - COMPREHENSIVE HEALTH ASSOCIATION OF NORTH DAKOTA.** During the 2023-24 interim, the legislative management, in consultation with the insurance commissioner, department of health and human services, board of the comprehensive health association of North Dakota, and public employees retirement system, shall conduct a study to determine the steps necessary for the dissolution of the comprehensive health association of North Dakota under chapter 26.1-08. The study must include analysis of the enrollees, transitioning of the current enrollees' plans to potential Affordable Care Act plans, Medicaid programs, and public employees retirement system plans, and any other options determined by the study. The study also must include a process to discontinue any new enrollment into the comprehensive health association of North Dakota immediately and transition all major medical plans in effect as soon as plan year 2024. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 497

### SENATE BILL NO. 2192

(Senators Hogue, Cleary)  
(Representatives Lefor, Vigesaa)

AN ACT to provide for a legislative management study relating to the impact of term limits on the legislative assembly.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - IMPACT OF TERM LIMITS ON THE LEGISLATIVE ASSEMBLY.** During the 2023-24 interim, the legislative management shall study the impact of term limits on the manner in which the legislative assembly conducts business. The study must include an assessment of the desirability of providing increased educational opportunities for legislative members due to shortened tenures in the legislative assembly, increasing the number of legislative council policy staff available to assist new members, and holding legislative sessions on an annual basis. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

Approved March 22, 2023

Filed March 23, 2023

## CHAPTER 498

### SENATE BILL NO. 2202

(Senators Cleary, Larson, Lee, Myrdal, Sickler)  
(Representative Hanson)

AN ACT to provide an appropriation to the attorney general for a domestic violence forensic medical examination grant program.

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

**SECTION 1. APPROPRIATION - ATTORNEY GENERAL - DOMESTIC VIOLENCE FORENSIC MEDICAL EXAMINATION GRANT PROGRAM - REPORTS - ONE-TIME FUNDING.** 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 attorney general for the purpose of providing domestic violence forensic medical examination program grants for community-based or hospital-based domestic violence examiner programs and related administrative costs, for the biennium beginning July 1, 2023, and ending June 30, 2025. Any organization that receives a grant under this section shall report to the attorney general and the appropriations committees of the sixty-ninth legislative assembly on the use of the funds received and the outcomes of its programs. The attorney general shall report to the appropriations committees of the sixty-ninth legislative assembly on the number of nurses trained, the number and location of nurses providing services related to domestic violence forensic medical examination programs, and documentation of collaborative efforts to assist victims, which includes nurses, the hospital or clinic, law enforcement, and state's attorneys. This funding is considered a one-time funding item.

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 499

### SENATE BILL NO. 2238

(Senators Hogan, Braunberger, Kreun, Weber)  
(Representative Mitskog)

AN ACT to provide for a legislative management study relating to criminal history record checks; and to provide an appropriation.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - CRIMINAL HISTORY RECORD CHECK PROCESS.** During the 2023-24 interim, the legislative management shall consider studying the statewide criminal history record check process. The study may include a comparison between the statewide and nationwide criminal history record check standards, a review of the average processing time of a requested criminal history record check, and an evaluation of methods to improve efficiency and processing times of the statewide criminal history record check process. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 2. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES - CRIMINAL HISTORY RECORD CHECKS.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$300,000, or so much of the sum as may be necessary, to the department of health and human services for the purpose of salary and wages for personnel to process fingerprints and complete required criminal history record checks and for the purchase of two fingerprint scanners, for the biennium beginning July 1, 2023, and ending June 30, 2025. The department is authorized two full-time equivalent positions to process fingerprints for criminal history record checks.

Approved May 6, 2023

Filed May 9, 2023

## CHAPTER 500

### SENATE BILL NO. 2257

(Senators Clemens, Myrdal)  
(Representatives Satrom, Schneider, Strinden)

AN ACT to amend and reenact section 1 of chapter 398 of the 2019 Session Laws, relating to a task force on prevention of sexual abuse of children; and to provide for a legislative management report and a report to the governor.

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

**SECTION 1. AMENDMENT.** Section 1 of chapter 398 of the 2019 Session Laws is amended and reenacted as follows:

#### **SECTION 1. TASK FORCE ON PREVENTION OF SEXUAL ABUSE OF CHILDREN - REPORT TO THE LEGISLATIVE MANAGEMENT AND THE GOVERNOR.**

1. Beginning with the effective date of this Act and ending ~~September 30, 2024~~June 30, 2025, the task force on the prevention of sexual abuse of children is established to develop and implement a comprehensive statewide approach to the prevention of child sexual abuse. The statewide approach must ensure appropriate policies, funding, staffing, resources, and programming are available. The task force shall build upon the efforts of the ~~2017-18~~2021-22 North Dakota task force on the prevention of sexual abuse of children.
2. The task force consists of the following members:
  - a. One member of the senate appointed by the majority leader of the senate, one member of the house of representatives appointed by the majority leader of the house of representatives, and one member of the minority party appointed by the minority leaders of the senate and the house of representatives;
  - b. The executive director of the department of health and human services, or the executive director's designee;
  - c. A representative of a children's advocacy center or similar organization that assists in the investigation, prosecution, and treatment of child sexual and physical abuse cases, appointed by the executive director of the department of health and human services;
  - d. A representative of a domestic violence rape crisis center involved in the prevention of child abuse or the treatment of child abuse victims, or both, appointed by the executive director of the department of health and human services;
  - e. The superintendent of public instruction, or the superintendent's designee;

- f. A representative of law enforcement, appointed by the attorney general;
    - g. The executive director of the Indian affairs commission, or the executive director's designee;
    - h. One school social worker from a public school district in the state, appointed by the superintendent of public instruction;
    - i. Two school principals, one from an urban school district and one from a rural school district in the state, appointed by the superintendent of public instruction from a list provided by the North Dakota council of educational leaders;
    - j. One member from the faith-based community, appointed by the attorney general;
    - k. Two school counselors, one from an urban school district and one from a rural school district in the state, appointed by the superintendent of public instruction from a list provided by the North Dakota school counselors association; and
    - l. Any other organization or individual the task force deems appropriate.
3. The executive director of the department of health and human services, or the executive director's designee, shall convene the task force. The task force shall elect a presiding officer by a majority vote of the membership of the task force. The task force shall meet at the call of the presiding officer.
4. The task force shall focus on:
  - a. Increasing child sexual abuse prevention education for tribal and nontribal children and adults;
  - b. Increasing interagency data collection, sharing, and collective analysis;
  - c. Supporting resource development for investigations and prosecutions of child sexual abuse, including the sentencing, supervision, and treatment of sex offenders;
  - d. Increasing trauma-informed services for children, adult survivors, and families; and
  - e. Implementing the ~~remaining~~ recommendations of the ~~November 2018~~ most recent final report of the North Dakota task force on the prevention of child sexual abuse.
5. The recommendations of the task force may include proposals for specific statutory changes, actions the task force deems necessary and appropriate to initiate awareness education of adults and children, and methods to foster cooperation among state agencies and between the state and local governments in adopting and implementing a policy addressing sexual abuse of children which may include:

- a. Developmentally appropriate resources for students in prekindergarten through grade twelve;
  - b. Training for school personnel on child sexual abuse;
  - c. Educational information to parents or guardians provided in school handbooks regarding the warning signs of a child being abused, along with any needed assistance, referral, or resource information;
  - d. Available counseling and resources for students affected by sexual abuse;
  - e. Emotional and educational support for a child of abuse to continue to be successful in school; and
  - f. Any other action deemed appropriate.
6. Before July first of each even-numbered year, the task force shall submit a report, together with any findings and recommendations, to the legislative management and the governor. Before July 1, ~~2024~~2025, the task force shall submit a final report, together with any findings and recommendations, to the legislative management and the governor.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 501

### SENATE BILL NO. 2278

(Senators Myrdal, Larson)  
(Representatives Christensen, Karls, Klemin)

AN ACT to provide for a legislative management study regarding municipal courts and judges.

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

##### SECTION 1. LEGISLATIVE MANAGEMENT STUDY - MUNICIPAL COURTS.

1. During the 2023-24 interim, the legislative management shall consider studying the laws and procedures relating to courts established under chapter 40-18. The study must include an examination of the:
  - a. Number and geographic location of existing municipal courts;
  - b. Access to municipal court ordinances;
  - c. Jurisdiction of the municipal courts;
  - d. Municipal court judge qualifications and training;
  - e. Transfer of cases to district court;
  - f. Appeal of cases to district court;
  - g. Supreme court general oversight of municipal courts;
  - h. Applicability of judicial administrative rules to municipal courts;
  - i. Requirements for recording proceedings in municipal court; and
  - j. Requirements to report information to the supreme court on the establishment or abolition of a court, the election, appointment and removal of municipal court judges and clerks, and annual caseload data and annual financial information on the imposition, collection, and disposition of fines and fees.
2. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 502

### SENATE BILL NO. 2291

(Senators Hogan, Braunberger, Dever)  
(Representatives Mitskog, Strinden)

AN ACT to provide for a legislative management study of the utilization of federal temporary assistance for needy families block grant funding received by the state.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT FUNDING.** During the 2023-24 interim, the legislative management shall consider studying the utilization of federal temporary assistance for needy families block grant funding received by the state. The study must include a review of the recent history of the use of the funds and an assessment and determination of the appropriate use of the funds for administrative costs, direct and indirect client financial and other support, and other purposes. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly.

Approved April 4, 2023

Filed April 5, 2023

## CHAPTER 503

### SENATE BILL NO. 2321

(Senator Hogan)  
(Representatives Dobervich, O'Brien, Schreiber-Beck)

AN ACT to provide for a legislative management study regarding open adoption policies.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - OPEN ADOPTION POLICIES REVIEW.** During the 2023-24 interim, the legislative management shall consider studying the state's policies and relevant case law regarding open adoptions to determine the feasibility and desirability for legislation relating to clarifying communication and the rights of biological parents.

1. The study must include:
  - a. Existing state policies regarding open adoptions;
  - b. The current practices of collection and storage of personal, contact, and medical information of biological parents;
  - c. Benefits and consequences of adopting legislation that would extend legal enforceability to open adoption agreements;
  - d. Best practices for keeping birth children and their adoptive parents aware of health complications in biological family members over time;
  - e. Any information relevant to open adoption or open adoption agreements that the legislative management deems important in understanding the totality of the issue;
  - f. The potential financial costs to adoptive families, adoption agencies, and the court system; and
  - g. Any barriers to extending legal enforceability to open adoption agreements in the state of North Dakota.
2. The legislative management may seek the assistance of the department of health and human services and adoption agencies that partner with the state of North Dakota.
3. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly.

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 504

### SENATE BILL NO. 2327

(Senators Clemens, Dever)  
(Representatives Dyk, Hoverson)

AN ACT to provide for a legislative management study regarding parentage and adoption policies.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - REVIEW OF PARENTAGE AND ADOPTION POLICY.** During the 2023-24 interim, the legislative management shall consider studying, with the assistance of the department of health and human services and the North Dakota commission on uniform state laws, the parentage and adoption practices currently in statute.

1. The study must include:
  - a. Current policies on determining and notifying a biological parent of parentage or a hearing on a petition for adoption;
  - b. The current practices of collection and storage of personal information of parents;
  - c. Best practices for protecting the privacy of individuals involved in the adoption process, including those regarding the adequate storage of personal data, methods of notifying a parent of parentage or of a hearing on a petition for adoption, and collecting and keeping correct contact and personal information from involved individuals;
  - d. The feasibility and desirability of adopting certain language from the 2017 Uniform Parentage Act, particularly those relating to more modern practices with the handling of personal data and the means of notification;
  - e. Any information relevant to the adoption process and its modernization which the department of health and human services may deem important;
  - f. The financial costs associated with the establishment and maintenance of a parentage registry within the state; and
  - g. Any barriers to establishment or maintenance of a parentage registry.
2. The legislative management may seek the assistance of the North Dakota commission on uniform state laws in the development of recommended policies and procedures.
3. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 505

### SENATE BILL NO. 2328

(Senators Wanzek, Erbele, Klein)  
(Representatives Headland, Vigesaa, Weisz)

AN ACT to create a school funding task force; and to provide for a legislative management report.

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

#### SECTION 1. SCHOOL FUNDING TASK FORCE - REPORT TO LEGISLATIVE MANAGEMENT.

1. During the 2023-24 interim, the legislative management shall establish and provide staffing and administrative services to a school funding task force facilitated by a nonpartisan leadership organization. The chair of legislative management may add additional, temporary nonvoting members to the task force, as deemed necessary by the task force chair, to serve without compensation. The task force may include public school administrators or business managers, public school teachers, five members of the legislative assembly appointed by the legislative management, parents of public school students, representatives from the department of public instruction, a representative from the governor's office, and a representative from a regional education association.
2. During the 2023-24 interim, the school funding task force shall:
  - a. Review litigation the state was a party to relating to school funding and the resulting implications for school funding models;
  - b. Analyze higher education funding sources to determine whether the sources may be used in whole or in part for the kindergarten through grade twelve system;
  - c. Review school payment formulas to determine whether education costs can be equalized across the state;
  - d. Study the size, student population, and economics of school districts and the number of facilities within the district per square mile compared with student population;
  - e. Develop and study sliding-scale models within school districts based on size, student populations, and economics;
  - f. Assess the negative impacts of the current funding formula;
  - g. Study school funding formulas used by other states;
  - h. Determine the benefits of and incentives to promote school district consolidation;

- i. Review school transportation costs considering location, size, and student enrollment;
  - j. Study high-cost student and special education student costs as those costs relate to the formula weighting factors; and
  - k. Analyze the cost of distance education, comparing the costs of different methods of instruction delivery, including synchronous as compared to asynchronous instruction.
3. The task force may:
    - a. Study the funding of school building maintenance and repairs considering location and whether buildings are located in a rural or urban area; and
    - b. Review ending fund balances and analyze how the current funding formula impacts ending fund balances.
  4. The task force shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly.

Approved April 28, 2023

Filed April 29, 2023

## CHAPTER 506

### SENATE BILL NO. 2341

(Senators K. Roers, Myrdal, Rummel)  
(Representatives McLeod, Steiner, Strinden)

AN ACT to provide for a study of youth services for children impacted or potentially impacted by human trafficking; and to provide for a legislative management report.

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

#### **SECTION 1. DEPARTMENT OF HEALTH AND HUMAN SERVICES - STANDARD FRAMEWORK OF SERVICES FOR CHILD VICTIMS OF HUMAN TRAFFICKING - REPORT TO LEGISLATIVE MANAGEMENT.**

1. During the 2023-24 interim, the department of health and human services shall study and implement, in collaboration with other stakeholders, a standard framework for youth services for children impacted or potentially impacted by human trafficking, which includes residential treatment.
2. The department of health and human services shall collaborate with other stakeholders, including the child and family services section of the department of health and human services, the office of the attorney general, and the human trafficking task force.
3. Before July 1, 2024, the department of health and human services shall report its findings and recommendations to the legislative management.

Approved April 26, 2023

Filed April 26, 2023

## CHAPTER 507

### SENATE BILL NO. 2359

(Senators Clemens, Lee)  
(Representatives Jonas, Koppelman, Marschall)

AN ACT to provide for a legislative management study, relating to the impact of political subdivisions levying special assessments against other political subdivisions and the overall impact on taxpayers.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - SPECIAL ASSESSMENTS LEVIED AGAINST POLITICAL SUBDIVISIONS.** During the 2023-24 interim, the legislative management shall consider studying the impact of political subdivisions levying special assessments against other political subdivisions and the overall impact on taxpayers. The study must include analysis of the impact on taxpayers not governed by the political subdivision levying special assessments and explore forms of taxation policy that minimize the levying of special assessments in the form of taxes through political subdivisions. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 508

### SENATE BILL NO. 2365

(Senator Klein)

AN ACT to provide for a legislative management study regarding township participation in the national flood insurance program.

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

#### SECTION 1. LEGISLATIVE MANAGEMENT STUDY - TOWNSHIP PARTICIPATION IN THE NATIONAL FLOOD INSURANCE PROGRAM.

1. During the 2023-24 interim, the legislative management shall study the roles of the insurance commissioner, department of emergency services, and department of water resources in relation to the tracking and updating of the relevant primary land use authority on lands outside a municipality's jurisdiction. The study must:
  - a. Include a method of tracking all organized townships within the state and maintaining updated contact information, certified annually by December thirty-first.
  - b. Consider a formal process for organized townships to request, establish, and track the yielding of land use authority to an adjacent jurisdiction.
  - c. Consider how insurance producers access the necessary information, including updated contact information of the authority, to appropriately associate potential insurance policy holders with the relevant land use authority for the purposes of the federal emergency management agency's national flood insurance program.
  - d. Consider how a member of the public may access the relevant land use authority associated with a specific parcel of land.
2. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 509

### SENATE BILL NO. 2366

(Senators Kannianen, Boehm, Klein)  
(Representatives Fegley, Nelson)

AN ACT to provide for a legislative management study of accessibility of natural gas in small communities.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - NATURAL GAS - SMALL COMMUNITIES.** During the 2023-24 interim, the legislative management shall consider studying the accessibility of natural gas in small communities. The study must include a review of existing programs to assist small communities with gaining access to natural gas and accessibility assistance programs that may need to be extended. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

Approved March 22, 2023

Filed March 23, 2023

## CHAPTER 510

### SENATE BILL NO. 2376

(Senator Sickler)

AN ACT to provide for a legislative management study regarding the recording of custodial interrogations.

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

#### SECTION 1. LEGISLATIVE MANAGEMENT STUDY - RECORDING OF CUSTODIAL INTERROGATIONS.

1. During the 2023-24 interim, the legislative management shall study, with the assistance of the North Dakota commission on uniform state laws, the recording practices of local and state law enforcement during custodial interrogations to determine the feasibility and desirability for uniform implementation of recording practices. The study must include the number of law enforcement agencies currently recording custodial interrogations and the following information:
  - a. Any policies regarding how the recording of interrogations is conducted;
  - b. The storage and retention practices associated with recording interrogations;
  - c. The types of equipment used to record interrogations;
  - d. The types of locations at which interrogations are recorded;
  - e. The types of criminal investigations in which interrogations are recorded and the frequency those interrogations are recorded;
  - f. The current disclosure of recorded interrogations in criminal discovery;
  - g. Best practices and current requirements for the recording of interrogations, including adoption of the Uniform Electronic Recordation of Custodial Interrogations Act;
  - h. The financial costs associated with the recording of custodial interrogations and implementation of uniform practices; and
  - i. Any barriers to uniform implementation of the recording of custodial interrogations.
2. The legislative management may seek the assistance of the North Dakota commission on uniform state laws in the development of recommended policies and procedures.
3. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly.

Approved March 29, 2023

Filed March 30, 2023

## CHAPTER 511

### SENATE BILL NO. 2389

(Senators Vedaa, J. Roers)  
(Representative Nelson)

AN ACT to provide for a legislative management study of the prior authorization process for health insurance.

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

#### **SECTION 1. LEGISLATIVE MANAGEMENT STUDY - HEALTH INSURANCE PRIOR AUTHORIZATION.**

1. During the 2023-24 interim, the legislative management shall consider studying prior authorization in health benefit plans. The study must include consideration of:
  - a. The extent to which prior authorization is used by health insurance companies in this state, including the types of services and procedures for which prior authorization is required.
  - b. The impact of prior authorization on patient care, including the effects on patient health outcomes, patient satisfaction, health care costs, and patient access to care.
  - c. The impact of prior authorization on health care providers and insurers, including the administrative burden, time, and cost associated with obtaining prior authorization, and the appropriate utilization of health care services.
  - d. State and federal laws and regulations that may impact prior authorization.
  - e. Input from stakeholders, including patients, providers, and commercial insurance plans.
2. The study may include consideration of issues related to response times, retroactive denial, data reporting, clinical criteria and medical necessity, transparency, fraud and abuse, reviewer qualifications, exceptions, and an appeal process.
3. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

Approved April 4, 2023

Filed April 5, 2023

## CHAPTER 512

### SENATE BILL NO. 2042

(State and Local Government Committee)  
(At the request of the Office of Management and Budget)

AN ACT to create and enact sections 54-44.4-05.1 and 54-44.4-09.1 of the North Dakota Century Code, relating to resolution of identical bids or proposals in procurement and secretary of state registration; and to amend and reenact sections 44-08-01, 44-08-02, 54-44.4-02, 54-44.4-05, 54-44.4-09, and 54-44.4-13 of the North Dakota Century Code, relating to reciprocal preference requirements in procurement, resident North Dakota bidder, seller, vendor, offeror, or contractor, exemptions from procurement, procurement solicitation methods, bidder registration requirements, approved vendors, and public notices.

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

**SECTION 1. AMENDMENT.** Section 44-08-01 of the North Dakota Century Code is amended and reenacted as follows:

**44-08-01. ~~Preference to North Dakota bidders, sellers, and contractors~~ Competitive purchasing required.**

- ~~1. The office of management and budget, any other state entity, and the governing body of any political subdivision of the state in purchasing any goods, merchandise, supplies, or equipment of any kind, or contracting to build or repair any building, structure, road, or other real property, shall give preference to bidders, sellers, or contractors resident in North Dakota. The preference must be equal to the preference given or required by the state of the nonresident bidder, seller, or contractor.~~
- ~~2. A state entity authorized to accept bids shall give preference to a resident North Dakota bidder when accepting bids for the provision of professional services, including research and consulting services. The preference must be equal to the preference given or required by the state of the nonresident bidder.~~
- ~~3. The office of management and budget, any other state entity, and the governing body of any political subdivision of the state in specifying or purchasing any goods, merchandise, supplies, or equipment, may not specify any trademarked or copyrighted brand or name, nor the product of any one manufacturer, nor any patented product, apparatus, device, or equipment, when the same will prevent proper competition, unless bidders also are asked for bids or offers upon other articles of like nature, utility, and merit. When it is advantageous that the purchase be of a particular brand of product or products of a particular manufacturer to the exclusion of competitive brands or manufacturers, the purchasing board or entity must document those circumstances and provide written justification for the proprietary specification or purchase. The purchasing board or entity shall procure the proprietary product through a competitive process unless the needed product is available exclusively from one source of supply or other circumstances exist under which competition can be waived.~~

**SECTION 2. AMENDMENT.** Section 44-08-02 of the North Dakota Century Code is amended and reenacted as follows:

**44-08-02. Resident North Dakota bidder, seller, vendor, offeror, and contractor defined.**

The term "a resident North Dakota bidder, seller, vendor, offeror, or contractor" when used in section 44-08-01, unless the context thereof clearly provides otherwise, means a bidder, seller, vendor, offeror, or contractor who has maintained a bona fide place of business within this state for at least one year prior to the date on which a contract was awarded.

<sup>263</sup> **SECTION 3. AMENDMENT.** Section 54-44.4-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.4-02. Office of management and budget purchasing services.**

The office of management and budget shall purchase or lease or otherwise arrange for the procurement, for all state agencies and institutions in the executive branch of state government, all materials, furniture, fixtures, printing, insurance, services, and other commodities. The International Peace Garden may participate in the procurement authorized by this section. The following commodities and services, however, are not subject to the procurement requirements of this chapter:

1. Land, buildings, space, or the rental thereof.
2. Telephone and telegraph service and electrical light and power services.
3. Public books, maps, periodicals, resource materials, and technical pamphlets.
4. Department of transportation materials, equipment, and supplies in accordance with section 24-02-16.
5. Procurements by the industrial commission for energy-related programs under chapters 17-05, 54-17.5, 54-17.6, 54-17.7, 54-63, and 54-63.1 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.
6. Services for the maintenance or servicing of equipment by the manufacturer or authorized servicing agent of that equipment when the maintenance or servicing can best be performed by the manufacturer or authorized service agent, or when such a contract would otherwise be advantageous to the state.
7. Emergency purchases the office of management and budget or a purchasing agency cannot make within the required time and which involve public health or public safety, or when immediate expenditures are necessary for repairs of state property to protect it against further loss or damage, or to prevent or minimize serious disruption in state services.
  - a. Emergency purchases made under this subsection must treat all bidders fairly and promote competition as is practicable under the circumstances;

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<sup>263</sup> Section 54-44.4-02 was also amended by section 4 of House Bill No. 1429, chapter 280.

- b. The procurement file must contain a written determination of:
    - (1) The basis for the emergency; and
    - (2) The basis for the selection of the particular contractor.
  - c. If the emergency circumstances warrant a noncompetitive purchase, the office of management and budget or the purchasing agency shall document within the procurement file a written determination of the basis for the noncompetitive purchase, including the circumstances that justified the noncompetitive purchase.
  - d. If the emergency purchase is subject to federal funding reimbursement, the office of management and budget or the purchasing agency shall ensure the procurement procedures and documentation are adequate to satisfy requirements for federal reimbursement.
  - e. If time allows, emergency purchases for commodities under this subsection may require a sample for use in determining whether an offered product meets specifications.
8. Commodities and services costing less than a specified amount as determined by written directive by the director of the office of management and budget.
  9. Specified commodities and services as determined by written directive by the director of the office of management and budget.
  10. Employee benefit services, trust-related services, and investment management services obtained by an agency with a fiduciary responsibility regarding those services.
  11. Services to extract, tow, store, and dispose of abandoned or submerged vehicles as defined in chapter 23.1-15.
  12. Contracts by the agriculture commissioner for agricultural market news services under cooperative agreements with the United States department of agriculture, ombudsmen for pipeline restoration under section 4.1-01-17, environmental impact mitigation services under section 4.1-01-21.1, ombudsmen for wind property issues under section 4.1-01-23, weed control inspection agents under section 4.1-14-02, and hemp testing under section 4.1-18.1-04.2.
  13. Contracts by the state auditor for audits of computer systems under section 54-10-29.
  14. Contracts by the attorney general with experts under section 10-33-145.
  15. Contracts by the department of health and human services for online virtual mental health and suicide prevention simulation-based training programs under subsection 28 of section 50-06-05.1 and brain injury informal supports under section 50-06.4-07.

All purchases made by the office of management and budget or a state agency or institution to which authority to purchase has been delegated by the office of

management and budget must be made in accordance with this chapter, rules adopted under this chapter, and written policies of the office of management and budget.

**SECTION 4. AMENDMENT.** Section 54-44.4-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.4-05. Competitive, limited competitive, noncompetitive, and negotiated purchases - Exempt records.**

1. Except as otherwise provided in ~~section~~sections 12-48-03.1 and 44-08-01, chapter 25-16.2, and this chapter, purchasing contracts must be awarded through a competitive bidding process to the lowest responsible bidder considering conformity with specifications, terms of delivery, and quality and serviceability, unless it is determined to be advantageous to the state to select a contractor through a competitive proposal process pursuant to section 54-44.4-10 using other or additional criteria. Notwithstanding this section, the director of the office of management and budget or the director's designee may determine a different procurement process is in the best interest of the state and shall document the circumstances, procurement process, and basis for contract award in the procurement file.
2. The procurement officer may reject any or all bids or proposals or negotiate for a lower price with a successful bidder or offeror. Each bid or proposal received, with the name of the bidder or offeror, must be recorded. The office of management and budget may enter into term contracts for the acquisition of commodities or services and may make multiple awards for term commodity or service contracts when it deems a multiple award to be in the best interests of the state.
3. All bids received under this chapter pursuant to a competitive sealed bid are exempt records under subsection 5 of section 44-04-17.1 until the date and time the bids are opened.
- ~~2-4.~~ The office of management and budget shall adopt rules specifying the circumstances under which competition may be waived or limited, when negotiation may be used, and specifying the required justifications and procedures for using those methods of purchasing. The office of management and budget shall adopt rules related to sending notice of intent to make limited competitive, noncompetitive, and negotiated purchases in accordance with this chapter. The notice must describe the needed commodity or service and the intended procurement method and must state that vendorspersons are permitted to submit bids or proposals for contracts to be awarded under this section. The circumstances that may permit limited competitive, noncompetitive, or negotiated purchases include:
  - a. The commodity or service is available from only one source.
  - b. The commodity or service is to be purchased for experimentation or trial.
  - c. No acceptable bid or proposal was received pursuant to a competitive bidding or competitive proposal process.
  - d. Commodities are being purchased for over-the-counter resale.

- e. Acceptable commodities or services are produced or provided by correctional institutions or other government agencies or a work activity center as defined in section 25-16.2-01.
- f. The anticipated cost of purchasing specified commodities or services is less than an amount determined by the office of management and budget which would justify the expense of a competitive bidding or competitive proposal process.
- g. A used commodity is advantageous to the state and the commodity is available only on short notice.
- h. The commodity is a component or replacement part for which there is no commercially available substitute and which can be obtained only from the manufacturer.
- i. Compatibility with equipment currently owned by the state is essential to the proper functioning of that equipment.
- j. The agency provides documentation indicating that the services or the circumstances are of such a nature that deviation from the procurement procedure is appropriate.
- k. Recurring support costs associated with implemented information technology solutions, including licensing, service agreements, maintenance, and subscriptions for software as a service, platform as a service, and infrastructure as a service.
- l. Contracts for specialized equipment, machinery, and materials required for manufacturing, production, and distribution by the North Dakota mill and elevator association under section 54-18-02.
- m. Purchases of copyrighted printed and electronic books, periodicals, subscriptions to publications, subscriptions to information services, prerecorded audio and video materials, state library materials, and state library online resources.

**SECTION 5.** Section 54-44.4-05.1 of the North Dakota Century Code is created and enacted as follows:

**54-44.4-05.1. Resolution of tie bids or proposals.**

In the event that two or more bids or proposals contain identical pricing or receive identical evaluation scores, preference must be given to a resident North Dakota bidder, seller, vendor, offeror, or contractor as defined in section 44-08-02.

**SECTION 6. AMENDMENT.** Section 54-44.4-09 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.4-09. Approved vendors~~Bidders~~ list.**

- 1. The office of management and budget shall establish and maintain ~~current lists~~ a bidders list of persons that desire to ~~provide commodities or services to the state. Every person that desires to bid or submit a proposal on contracts for commodities or services awarded under this chapter must be an approved vendor in order to be placed on the bidders list~~ be informed of government

procurement opportunities. The office of management and budget or the purchasing agency shall notify those on the list when issuing invitation for bids or request for proposals over the amount established for small purchases, except as otherwise provided in this section. The office of management and budget or the purchasing agency shall notify those on the list when sending notice of intent to make cooperative, limited competitive, noncompetitive, and negotiated purchases.

- ~~2. To become an approved vendor be placed on the bidders list~~ a person shall file an application with the office of management and budget. The application must contain information requested by the office of management and budget, including business and persons' names, telephone numbers, addresses, federal tax identification numbers, type of business organization, the types of commodities or services for which the applicant is interested in receiving solicitations, and other business information the office of management and budget determines relevant. ~~The application must also contain a statement appointing the secretary of state as the applicant's agent for service of process pursuant to subsection 3. The application must be signed and certified by an owner, partner, or company officer authorized by company bylaws or other organizational document to bind the company. The signature requirement may include the use of an electronic signature as defined in section 9-16-01 when authorized under section 9-16-17. The office of management and budget may require proof of the signing person's authority by certified copy of appropriate company documents.~~
- ~~3. At the time of filing the application to become an approved vendor, the applicant, if organized as a corporation, limited liability company, limited liability partnership, or limited partnership, must be properly and currently registered with the secretary of state according to its type of business organization as a corporation under chapter 10-19.1, a limited liability company under chapter 10-32.1, a limited liability partnership under chapter 45-22, or a limited partnership under chapter 45-10.2. Any exemptions to registration under the above chapters that would otherwise apply to those entities organized as such do not apply to this section and registration must be made for the applicant to become an approved vendor. Applicants for approved vendor status using a trade name or a fictitious partnership name must be in full compliance with chapter 47-25 or 45-11 at the time of making the application. Whenever any registration required by this section is canceled, revoked, or not renewed, the vendor ceases to be an approved vendor.~~

~~By signing and filing the application, the vendor applicant appoints the secretary of state as its true and lawful agent for service of process in this state upon whom may be served all lawful process in any action or proceeding against the vendor if the vendor or its registered agent cannot be found for service of process in this state. The signed application is written evidence of the applicant's consent that any process served against the applicant that is so served upon the secretary of state is of the same legal force and effect as if served upon the applicant personally within this state. Within ten days after service of the summons upon the secretary of state pursuant to this subsection, notice of the service with the summons and complaint in the action must be sent to the defendant vendor at the vendor's last known address by certified mail with return receipt requested and proof of mailing must be attached to the summons. The secretary of state shall keep a record of all process served upon the secretary of state under this section showing~~

~~the day and hour of service. When service of process is made as provided in this subsection, the court, before entering a default judgment, or at any stage of the proceeding, may order a continuance as may be necessary to afford the defendant vendor reasonable opportunity to defend any action pending against the vendor.~~

- ~~4. The procurement officer may authorize receipt of a bid or proposal from a vendor that is not on the list of approved vendors if the procurement officer makes a written determination that it is in the best interest of the state to receive the bid or proposal. The successful bidder or offeror must become approved before the award and the existence of this approval requirement must be stated in the solicitation. If an unapproved vendor is selected for award, the vendor's bid or proposal may be rejected if that vendor fails to become approved within sixty days or within a shorter period as specified in writing by the procurement officer. Before issuing a solicitation, the procurement officer may waive the approval requirement if the procurement officer determines, in consultation with the secretary of state, that registration with the secretary of state and appointment of an agent for service of process in this state are not required. The waiver of the approval requirement must be stated in the solicitation. In the event that two or more bids contain identical pricing or receive identical evaluation scores, preference must be given pursuant to section 44-08-01.1. If the application of section 44-08-01.1 does not result in the award of a contract, preference must be given to bids submitted by vendors approved under this section. The office of management and budget or purchasing agency may additionally send notice of procurement opportunities to persons that are not on the bidders list.~~

**SECTION 7.** Section 54-44.4-09.1 of the North Dakota Century Code is created and enacted as follows:

**54-44.4-09.1. Secretary of state registration.**

A person that has a registration requirement with the secretary of state must be registered before the contract award and the registration must remain active for the duration of the contract period.

**SECTION 8. AMENDMENT.** Section 54-44.4-13 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.4-13. Cooperative purchasing.**

1. The office of management and budget shall purchase commodities or services as requested by agencies and institutions under the jurisdiction of the state board of higher education and the legislative and judicial branches of state government.
2. The office of management and budget and the agencies and institutions under the jurisdiction of the state board of higher education shall make joint purchases of like commodities or services of high common usage when the office of management and budget and the state board of higher education determine it is in the best interest of the state.
3. The director of the office of management and budget or the director's designee may agree to purchase commodities or services under contracts entered into by the United States general services administration or contracts of other government entities if it is determined to be in the best interest of the

state after consideration of price, contractual terms and conditions, and the availability of competition ~~from approved vendors under section 54-44.4-09.~~

4. The director of the office of management and budget or the director's designee may participate in, sponsor, or administer a cooperative purchasing agreement with one or more government entities or a nonprofit organization established on behalf of public entities for the procurement of commodities or services in accordance with an agreement entered into between the participants.
5. The director of the office of management and budget or the director's designee may coordinate with the director of the department of transportation or the director's designee to establish or participate in contracts which may be made available to entities that have been determined by the department of transportation to be transportation providers under chapter 39-04.2 eligible to receive state funds or federal funds for public transportation.
6. Cooperative purchasing may include open-ended contracts that are available to other government entities, nonprofit organizations established on behalf of public entities, tribal agencies, or transportation providers determined to be eligible under this section.
7. Before entering into a cooperative purchasing agreement under this section, the office of management and budget must determine that the contracts were awarded through full and open competition or source selection methods specified in section 54-44.4-05 and shall send notice to ~~approved vendors~~ the bidders list of the office's intent to make a cooperative purchase in accordance with this chapter.

Approved March 23, 2023

Filed March 23, 2023

## CHAPTER 513

### HOUSE BILL NO. 1183

(Representatives Porter, Dockter, Heinert, Karls, Kasper, Louser, Motschenbacher,  
Ostlie, D. Ruby, Schauer)  
(Senators Axtman, Larson)

AN ACT to amend and reenact subsection 12 of section 54-52-01, section 54-52-06.4, subsection 3 of section 54-52-17, and subsection 4 of section 54-52-17 of the North Dakota Century Code, relating to a public employees retirement system retirement plan for peace officers; and to provide for a legislative management study.

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

<sup>264</sup> **SECTION 1. AMENDMENT.** Subsection 12 of section 54-52-01 of the North Dakota Century Code is amended and reenacted as follows:

12. "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~~state, except by the highway patrol for members of the retirement plan created under chapter 39-03.1, or is employed by a political subdivision and, notwithstanding subsection 13, 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. A peace officer who is a participating member of the law enforcement retirement plan created by this chapter who begins employment after August 1, 2005, is ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system.

<sup>265</sup> **SECTION 2. AMENDMENT.** Section 54-52-06.4 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-06.4. Contribution by peace officers employed by the ~~bureau of criminal investigation~~state or security officers employed by the national guard - Employer contribution.**

1. a. 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. Peace officer contributions increase by one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the reporting period of January 2013.

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<sup>264</sup> Section 54-52-01 was also amended by section 2 of House Bill No. 1040, chapter 514.

<sup>265</sup> Section 54-52-06.4 was also amended by section 1 of House Bill No. 1309, chapter 515, and section 42 of Senate Bill No. 2015, chapter 47.

- b. Each peace officer employed by the state, other than a peace officer employed by the bureau of criminal investigation, who is a member of the public employees retirement system is assessed and shall pay six percent of the employee's monthly salary.
  - c. Effective August 1, 2015, each national guard security officer who is a member of the public employee's retirement system is assessed and monthly shall pay six percent of the employee's monthly salary. National guard security officer contributions decrease by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2016.
  - d. The assessment must be deducted and retained out of the employee's salary in equal monthly installments.
2. The peace officer's or security 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 or security 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 or security officer's assessment.

<sup>266</sup> **SECTION 3. 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, a firefighter employed by a political subdivision, ~~or a peace officer employed by the state, 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 members first enrolled after December 31, 2015, except for a national guard security officer or firefighter, a firefighter employed by a political subdivision, a peace officer ~~employed by the state, a peace officer or~~ correctional officer employed by ~~the bureau of criminal investigation or by a political subdivision,~~ or a supreme court or district court judge, is:
    - (1) The first day of the month next following the month in which the member attains the age of sixty-five years; or

<sup>266</sup> Section 54-52-17 was also amended by section 4 of House Bill No. 1183, chapter 513, section 2 of House Bill No. 1309, chapter 515, section 3 of House Bill No. 1309, chapter 515, section 4 of House Bill No. 1309, chapter 515, and section 43 of Senate Bill No. 2015, chapter 47.

- (2) When the member has a combined total of years of service credit and years of age equal to ninety and the member attains a minimum age of sixty and has not received a retirement benefit under this chapter.
- c. Normal retirement date for a national guard security officer or firefighter is:
- (1) The first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty-five years and has completed at least three eligible years of employment; or
  - (2) When the national guard security officer or firefighter 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, firefighter, 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, firefighter, or correctional officer attains the age of fifty-five years and has completed at least three eligible years of employment; or
  - (2) When the peace officer, firefighter, 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.
- e. (1) Normal retirement date for a peace officer employed by the bureau of criminal investigation is:
- (1)(a) 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 eligible years of employment; or
  - (2)(b) 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.
- (2) Normal retirement date for a peace officer employed by the state, other than a peace officer employed by the bureau of criminal investigation, is:
- (a) 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 eligible years of employment; or
  - (b) 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.
- f. 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.

- g. (1) ~~Early retirement date, except for a national guard security officer or firefighter, a firefighter employed by a political subdivision, or a peace officer, or correctional officer employed by the bureau of criminal investigation or by a political subdivision, or a peace officer employed by the state,~~ 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.
- (2) 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.
- (3) ~~For a peace officer employed by the state, other than a peace officer employed by the bureau of criminal investigation, or a firefighter employed by a political subdivision or 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, firefighter, or correctional officer attains the age of fifty years and has completed at least three years of eligible employment.
- (4) ~~For a peace officer employed by the bureau of criminal investigation, early retirement date is the first day of the month next following the month in which the peace officer attains the age of fifty years and has completed at least three years of eligible employment.~~
- h. 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.
- (1) A member is eligible to receive disability retirement benefits only if the member became disabled during the period of eligible employment and applies for disability retirement benefits within twelve months of the date the member terminates employment.
- (2) 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 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 the board deems necessary and these payments are appropriated from the retirement fund for those purposes. A member's receipt of disability benefits under this section is limited to receipt from the fund to which the member was actively contributing at the time the member became disabled.

<sup>267</sup> **SECTION 4. AMENDMENT.** Subsection 4 of section 54-52-17 of the North Dakota Century Code is amended and reenacted as follows:

4. The board shall calculate retirement benefits as follows:
  - a. Normal retirement benefits for all retirees, except supreme and district court judges, peace officers employed by the bureau of criminal investigation, and other peace officers employed by the state, reaching normal retirement date equal an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which is determined as follows:
    - (1) For members first enrolled:
      - (a) Before January 1, 2020, service benefit equals two percent of final average salary multiplied by the number of years of service employment.
      - (b) After December 31, 2019, service benefit equals one and seventy-five hundredths percent of final average salary multiplied by the number of years of service employment.
    - (2) Prior service benefit equals two percent of final average salary multiplied by the number of years of prior service employment.
  - b. Normal retirement benefits for all supreme and district court judges under the public employees retirement system reaching normal retirement date equal an annual amount, payable monthly, comprised of a benefit as defined in this chapter, determined as follows:
    - (1) Benefits must be calculated from the time of appointment or election to the bench and must equal three and one-half percent of final average salary multiplied by the first ten years of judicial service, two and eighty hundredths percent of final average salary multiplied by the second ten years of judicial service, and one and one-fourth percent of final average salary multiplied by the number of years of judicial service exceeding twenty years.
    - (2) Service benefits must include, in addition, an amount equal to the percent specified in subdivision a of final average salary multiplied by the number of years of nonjudicial employee service and employment.
  - c. Normal retirement benefits for a peace officer employed by the bureau of criminal investigation reaching the normal retirement date equals an annual amount, payable monthly, comprised of a service benefit and a prior service benefit determined as follows:
    - (1) For members first enrolled:

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<sup>267</sup> Section 54-52-17 was also amended by section 3 of House Bill No. 1183, chapter 513, section 2 of House Bill No. 1309, chapter 515, section 3 of House Bill No. 1309, chapter 515, section 4 of House Bill No. 1309, chapter 515, and section 43 of Senate Bill No. 2015, chapter 47.



The minimum monthly disability retirement benefit under this section is one hundred dollars.

**SECTION 5. LEGISLATIVE MANAGEMENT STUDY - PEACE OFFICER AND PUBLIC SAFETY PERSONNEL RETIREMENT PLANS.** During the 2023-24 interim, the legislative management shall consider studying the retirement system for peace officers and public safety personnel in the state. The study must include consideration of the public employees retirement system retirement plans offered to peace officers and safety personnel; how political subdivisions provide retirement benefits to peace officers and safety personnel; how other states provide retirement benefits to peace officers and safety personnel; the level of benefits and contributions in the state, political subdivision, and other state plans; how peace officers and public safety personnel transition between these retirement plans; and factors unique to retirement plans in the public safety sector. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

Approved April 18, 2023

Filed April 18, 2023

## CHAPTER 514

### HOUSE BILL NO. 1040

(Legislative Management)  
(Retirement Committee)

AN ACT to create and enact sections 54-52-02.15, 54-52.2-09, 54-52.6-02.1, 54-52.6-02.2, 54-52.6-05.1, 54-52.6-09.5, 54-52.6-09.6, 54-52.6-22, and 54-52.6-23 of the North Dakota Century Code, relating to the closure of the public employees retirement system main plan, the deferred compensation program, and expansion of the defined contribution retirement plan; to amend and reenact paragraph 1 of subdivision a of subsection 1 of section 15-39.1-10.3, sections 54-52-01, 54-52-02.5, 54-52-02.9, 54-52-02.11, and 54-52-02.12, subsection 2 of section 54-52-05, sections 54-52-06 and 54-52-14.3, subdivision b of subsection 1 of section 54-52-17.2, and sections 54-52.6-01, 54-52.6-02, 54-52.6-03, 54-52.6-05, 54-52.6-08, 54-52.6-09, 54-52.6-10, 54-52.6-13, 54-52.6-15, 54-52.6-19, and 57-51.1-07.5 of the North Dakota Century Code, relating to the public employees retirement system defined benefit and defined contribution retirement plans and the state share of oil and gas taxes; to repeal sections 54-52-06.5 and 54-52.6-03 of the North Dakota Century Code, relating to public employees retirement system retirement plan contribution rates upon reaching full funding and balance transfer when opting to participate in the defined contribution plan; to provide for a legislative management study; to provide for a transfer; to provide for application; and to provide an effective date.

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

<sup>268</sup> **SECTION 1. AMENDMENT.** Paragraph 1 of subdivision a of subsection 1 of section 15-39.1-10.3 of the North Dakota Century Code is amended and reenacted as follows:

- (1) The public employees retirement system, except an "eligible employee" as that term is defined under section 54-52-02.15.

<sup>269</sup> **SECTION 2. AMENDMENT.** Section 54-52-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-52-01. Definition of terms.**

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

1. "Account balance" means the total contributions made by the employee, vested employer contributions under section 54-52-11.1, the vested portion of the vesting fund as of June 30, 1977, and interest credited thereon at the rate established by the board.

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<sup>268</sup> Section 15-39.1-10.3 was also amended by section 4 of Senate Bill No. 2053, chapter 70.

<sup>269</sup> Section 54-52-01 was also amended by section 1 of House Bill No. 1183, chapter 513.

2. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.
3. "Correctional officer" means a participating member who is employed as a correctional officer by a political subdivision.
4. "Deferred member" means a participating member who is not actively participating in the main plan under this chapter and who has an account intact in the main plan under this chapter.
5. "Eligible employee", except as otherwise provided under section 54-52-02.15, means ~~alla permanent employees~~employee who ~~meet~~meets all of the eligibility requirements set by this chapter and who ~~are~~is eighteen years or more of age, ~~and. The term~~ includes appointive and elective officials under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12, and nonteaching employees of the superintendent of public instruction, including the superintendent of public instruction, who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.13, and employees of the state board for career and technical education who elect to transfer from the teachers' fund for retirement to the public employees retirement system under section 54-52-02.14. ~~Eligible employee~~The term does not include nonclassified state employees who ~~elect~~elect under section 54-52.6-02 to become members of the retirement plan established under chapter 54-52.6 ~~but. The term~~ does include employees of the judicial branch and employees of the board of higher education and state institutions under the jurisdiction of the board of higher education.
- 5-6. "Employee" means any individual employed by a governmental unit, whose compensation is paid out of the governmental unit's funds, or funds controlled or administered by a governmental unit, or paid by the federal government through any of its executive or administrative officials; licensed employees of a school district means those employees eligible to participate in the teachers' fund for retirement who, except under subsection 2 of section 54-52-17.2, are not eligible employees under this chapter.
- 6-7. "Employer" means a governmental unit.
- 7-8. "Firefighter" means a participating member who is employed as a firefighter by a political subdivision and, notwithstanding subsection 13, for an individual employed after July 31, 2017, is employed at least thirty-two hours per week and at least twenty weeks each year of employment. A firefighter who is a participating member of the law enforcement retirement plan created by this chapter who begins employment after July 31, 2017, is ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system. The term does not include a firefighter employee of the North Dakota national guard.
- 8-9. "Funding agent" or "agents" means an investment firm, trust bank, or other financial institution which the retirement board may select to hold and invest the employees' and members' contributions.
- 9-10. "Governmental unit" means the state of North Dakota, except the highway patrol for members of the retirement plan created under chapter 39-03.1, or a participating political subdivision ~~thereof~~of the state.

- 40-11. "National guard security officer or firefighter" means a participating member who is:
- a. A security police employee of the North Dakota national guard; or
  - b. A firefighter employee of the North Dakota national guard.
- 44-12. "Participating member" means an eligible employee who through payment into the plan has established a claim against the plan.
- 42-13. "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 13, 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. A peace officer who is a participating member of the law enforcement retirement plan created by this chapter who begins employment after August 1, 2005, is ineligible to participate concurrently in any other retirement plan administered by the public employees retirement system.
- 13-14. "Permanent employee" means a ~~governmental unit~~an employee whose services are not limited in duration and who is filling an approved and regularly funded position in an eligible governmental unit, and is employed twenty hours or more per week and at least twenty weeks each year of employment.
- 44-15. "Prior service" means service or employment before July 1, 1966.
- 45-16. "Prior service credit" means such credit toward a retirement benefit as the retirement board may determine under the provisions of this chapter.
- 46-17. "Public employees retirement system" means the retirement plan and program established by this chapter.
- 47-18. "Retirement" means the acceptance of a retirement allowance under this chapter upon either termination of employment or termination of participation in the retirement plan.
- 48-19. "Retirement board" or "board" means the governing authority created under section 54-52-03.
- 49-20. "Seasonal employee" means a participating member who does not work twelve months a year.
- 20-21. "Service" means employment on or after July 1, 1966.
- 24-22. "Service benefit" means the credit toward retirement benefits as determined by the retirement board under the provisions of this chapter.
- 22-23. "Temporary employee" means a ~~governmental unit~~an employee who is not eligible to participate as a permanent employee, who is at least eighteen years old and not actively contributing to another employer-sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.

23-24. "Wages" and "salaries" means the member's earnings in eligible employment under this chapter 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, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement incentive pay, severance pay, medical insurance, workforce safety and insurance benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between the member and participating employer. Bonuses may be considered as salary under this section if reported and annualized pursuant to rules adopted by the board.

<sup>270</sup> **SECTION 3. AMENDMENT.** Section 54-52-02.5 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-02.5. Newly elected and appointed state officials.**

1. After December 31, 1999, ~~a person~~ but before January 1, 2025, an individual elected or appointed to a state office for the first time must, from and after the date that ~~person~~ individual qualifies and takes office, be a participating member of the public employees retirement system unless that person makes an election at any time during the first six months after the date the person takes office to participate in the defined contribution retirement plan established under chapter 54-52.6.
2. After December 31, 2024, an individual elected or appointed to a state office for the first time, from and after the date that individual qualifies and takes office, must be a participating member of the defined contribution retirement plan established under chapter 54-52.6, unless at the time of election or appointment the individual is a participating or deferred member under this chapter, in which case the official remains a participating member under this chapter.
3. As used in this section, the phrase "for the first time" means ~~a person~~ an individual appointed, who, after December 31, 1999, does not hold office as an appointed official at the time of that ~~person's~~ individual's appointment.

<sup>271</sup> **SECTION 4. 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.**

1. ~~Within~~ Before January 1, 2025, within one hundred eighty days of beginning employment, a temporary employee may elect to participate in the public employees retirement system under this chapter and receive credit for service after enrollment. Monthly, the temporary employee shall pay to the fund an amount equal to ~~eight~~ fourteen and twelve hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by ~~two~~ one percent times the temporary

<sup>270</sup> Section 54-52-02.5 was also amended by section 36 of Senate Bill No. 2015, chapter 47.

<sup>271</sup> Section 54-52-02.9 was also amended by section 37 of Senate Bill No. 2015, chapter 47.

~~employee's present monthly salary beginning with the monthly reporting period of January 2012, and with an additional two percent increase, beginning with the reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014~~2025.

2. If the temporary employee first enrolled:
  - a. Before January 1, 2020, in addition the temporary employee shall pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2.
  - b. After December 31, 2019, the temporary employee shall pay to the fund an additional amount equal to one and fourteen hundredths percent times the temporary employee's present monthly salary.
3. A temporary employee who is a participating member under this chapter due to employment before January 1, 2025, who becomes a permanent employee after December 31, 2024, qualifies to participate in the defined benefit retirement plan under this chapter and receive credit for service after enrollment.
4. After December 31, 2024, and within one hundred eighty days of beginning employment, a temporary employee may elect to participate in the defined contribution retirement plan under chapter 54-52.6.
5. 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.

<sup>272</sup> **SECTION 5. AMENDMENT.** Section 54-52-02.11 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-02.11. Participation requirements for nonstate elected officials.**

Elected

1. Before January 1, 2025, eligible elected officials of participating counties, at their individual option, may enroll in the defined benefit plan within the first six months of their term.
2. After December 31, 2024, eligible elected officials of participating counties, at their individual option, may enroll in the defined contribution retirement plan under chapter 54-52.6 within the first six months of their term.

<sup>273</sup> **SECTION 6. AMENDMENT.** Section 54-52-02.12 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>272</sup> Section 54-52-02.11 was also amended by section 38 of Senate Bill No. 2015, chapter 47.

**54-52-02.12. Participation requirements for nonstate appointed officials.**

1. Nonstate appointed officials of participating employers appointed on or after August 1, 1999, but before January 1, 2025, who meet the participation requirements of this chapter must be enrolled in the defined benefit plan effective within the first month of taking office.
2. After December 31, 2024, nonstate appointed officials of participating employers who meet the participation requirements must be enrolled in the defined contribution retirement plan under chapter 54-52.6 effective within the first month of taking office.

<sup>274</sup> **SECTION 7.** Section 54-52-02.15 of the North Dakota Century Code is created and enacted as follows:

**54-52-02.15. Public employees retirement system main plan - Closure to new hires - Multiple plan membership.**

1. Under this section "eligible employee" means a permanent employee who:
  - a. Meets all the eligibility requirements set by this chapter;
  - b. Is at least eighteen years of age;
  - c. Becomes a participating member after December 31, 2024; and
  - d. Is not eligible to participate in the law enforcement plan, judges' plan, highway patrol plan, teachers' fund for retirement plan, or alternative retirement program established under section 15-10-17 for university system employees.
2. Effective January 1, 2025, the public employees retirement system defined benefit main plan maintained for employees is closed to new eligible employees. However, an employee who becomes a participating or deferred member under this chapter before January 1, 2025, remains in the defined benefit retirement plan under this chapter, regardless of being rehired after December 31, 2024.
3. Except as otherwise provided under this section, effective January 1, 2025, an eligible employee who begins employment with an employer shall participate in the defined contribution retirement plan under chapter 54-52.6 as provided under section 54-52.6-02.1.
4. This section does not impact an employee to the extent the employee is a participating member in one or more of the following enumerated plans: law enforcement plan, judges' plan, highway patrol plan, teachers' fund for retirement plan, or alternative retirement program established under section 15-10-17 for university system employees.

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<sup>273</sup> Section 54-52-02.12 was also amended by section 39 of Senate Bill No. 2015, chapter 47.

<sup>274</sup> Section 54-52-02.15 was amended by section 40 of Senate Bill No. 2015, chapter 47.

- a. A participating or deferred member in the defined contribution retirement plan under chapter 54-52.6 who becomes eligible to participate in a plan enumerated under this subsection is eligible to participate in the retirement plan enumerated under this subsection.
- b. A participating member of a retirement plan enumerated under this subsection who becomes an eligible employee is not eligible to participate in the defined benefit retirement plan under this chapter but instead participates in the defined contribution retirement plan under chapter 54-52.6. However, this subdivision does not apply to an individual who before January 1, 2025, is a participating or a deferred member under this chapter, as that individual continues to participate in the defined benefit retirement plan under this chapter.

5. The board shall adopt rules to implement this section.

**SECTION 8. AMENDMENT.** Subsection 2 of section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Each member must be assessed and required to pay monthly ~~four~~seven percent of the monthly salary or wage paid to the member, and such assessment must be deducted and retained out of such salary in equal monthly installments commencing with the first month of employment. ~~Member contributions increase by one percent of the monthly salary or wage paid to the member beginning with the monthly reporting period of January 2012, and with an additional increase of one percent, beginning with the monthly reporting period of January 2013, and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.~~

<sup>275</sup> **SECTION 9. AMENDMENT.** Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-06. Employer's contribution to retirement plan - Report to the legislative assembly employee benefits programs committee.**

1. Each governmental unit shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. Governmental unit contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the reporting period of January 2013; ~~and with an additional increase of one percent, beginning with the monthly reporting period of January 2014; and with an additional increase of one percent, beginning with the monthly reporting period of January 2024.~~ For a participating member who first enrolls after December 31, 2019, the governmental unit shall contribute an additional amount equal to one and fourteen-hundredths percent of the monthly salary or wage of the participating member.
2. For those members who elect to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case of a member not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3

<sup>275</sup> Section 54-52-06 was also amended by section 10 of House Bill No. 1040, chapter 514.

of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, into the retirement fund from the governmental unit's funds appropriated for payroll and salary or any other funds available for these purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, or failing to otherwise comply with the board's established wage reporting or payroll reporting process requirements, is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction of a month after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.

3. An employer is required to submit contributions for any past eligible employee who was employed after July 1, 1977, for which contributions were not made if the employee would have been eligible to become vested had the employee participated and if the employee elects to join the public employees retirement system. Employer contributions may not be assessed for eligible service that an employee has waived pursuant to subsection 1 of section 54-52-05.
4. ~~The~~Annually, the board shall report to each session of the legislative assembly ~~the employee benefits programs committee~~ the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

<sup>276</sup> **SECTION 10. AMENDMENT.** Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-06. Employer's contribution to retirement plan - Report to the employee benefits programs committee.**

4. Each

1. a. As determined by actuarial valuations, each state governmental unit shall contribute to the defined benefit plan an amount equal to four and twelve hundredths percent of the monthly salary or wage of a participating member. Governmental unit contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the reporting period of January 2013; with an additional increase of one percent, beginning with the monthly reporting period of January 2014; and with an additional increase of one percent, beginning with the monthly reporting period of January 2024 on a level percent of compensation basis for all main system defined benefit retirement plan employees and all defined contribution retirement plan employees sufficient under the actuarial valuation to meet both the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability of the main plan over a closed period of thirty and one-half years, beginning January 1, 2026, and continuing through

<sup>276</sup> Section 54-52-06 was also amended by section 9 of House Bill No. 1040, chapter 514.

- June 30, 2056. By November fifteenth of each even-numbered year the board shall publish the contribution rate required under this subsection. The board shall calculate this rate based on the July first actuarial report of that year.
- b. Each participating political subdivision shall contribute an amount equal to eight and twelve-hundredths percent of the monthly salary or wage of a participating member.
- c. For a participating member who first enrolls after December 31, 2019, the governmental unit a participating political subdivision shall contribute an additional amount equal to one and fourteen-hundredths percent of the monthly salary or wage of the participating member.
2. For those members who elect to exercise their rights under section 54-52-17.14, the employing governmental unit, or in the case of a member not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay the contribution monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, into the retirement fund from the governmental unit's funds appropriated for payroll and salary or any other funds available for these purposes. Any governmental unit failing to pay the contributions monthly, or in the case of an election made pursuant to section 54-52-17.14 a lump sum, or failing to otherwise comply with the board's established wage reporting or payroll reporting process requirements, is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction of a month after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.
3. An employer is required to submit contributions for any past eligible employee who was employed after July 1, 1977, for which contributions were not made if the employee would have been eligible to become vested had the employee participated and if the employee elects to join the public employees retirement system. Employer contributions may not be assessed for eligible service that an employee has waived pursuant to subsection 1 of section 54-52-05.
4. Annually, the board shall report to the employee benefits programs committee the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

**SECTION 11. AMENDMENT.** Section 54-52-14.3 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-14.3. Public employee retirement funds - Use and investment.**

Any provision of law relating to the use and investment of public employee retirement funds must be deemed a part of the employment contracts of the employees participating in any public employee retirement system. All moneys from any source paid into any public employee retirement system fund created by the laws

of this state must be used and invested only for the exclusive benefit of the members, retirees, and beneficiaries of ~~that~~the retirement system, including the payment of system administrative costs.

<sup>277</sup> **SECTION 12. AMENDMENT.** Subdivision b of subsection 1 of section 54-52-17.2 of the North Dakota Century Code is amended and reenacted as follows:

b. Pursuant~~Subject to section 54-52-02.15 and pursuant~~ to rules adopted by the board, an employee who has service credit in the system and in any of the plans described in paragraphs 1 and 2 of subdivision a is entitled to benefits under this chapter. The benefits of a temporary employee employed after July 31, 2015, must be calculated using the benefit formula in section 54-52-17. A permanent employee or a temporary employee employed before August 1, 2015, may elect to have benefits calculated using the benefit formula in section 54-52-17 under either of the following methods:

- (1) The final average salary as calculated in section 54-52-17. If the participating member has worked for less than thirty-six months at retirement, the final average salary is the average salary for the total months of employment.
- (2) The final average salary as calculated in section 54-52-17 for employment with any of the three eligible employers under this subdivision, with service credit not to exceed one month in any month when combined with the service credit earned in the alternate retirement system.

<sup>278</sup> **SECTION 13.** Section 54-52.2-09 of the North Dakota Century Code is created and enacted as follows:

**54-52.2-09. Employer match for members of defined contribution retirement plan.**

An employee who first participated in the defined contribution retirement plan under chapter 54-52.6 after December 31, 2024, who elects to contribute less than the optional three percent of wages or salary under subdivision b of subsection 1 of section 54-52.6-09, who participates in the deferred compensation program under this chapter, qualifies for employer matching of contributions made under this section. The employee may elect to contribute an amount of wages or salary which does not exceed any remaining balance of the optional three percent contribution and the employer shall match this contribution. This section does not limit the ability of an employee to contribute unmatched wages or salary under this chapter, subject to federal contribution limitations.

<sup>279</sup> **SECTION 14. AMENDMENT.** Section 54-52.6-01 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>277</sup> Section 54-52-17.2 was also amended by section 22 of Senate Bill No. 2053, chapter 70.

<sup>278</sup> Section 54-52.2-09 was amended by section 44 of Senate Bill No. 2015, chapter 47.

<sup>279</sup> Section 54-52.6-01 was also amended by section 45 of Senate Bill No. 2015, chapter 47.

### 54-52.6-01. Definition of terms.

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

1. "Board" means the public employees retirement system board.
2. "Deferred member" means ~~a person who elected to receive deferred vested retirement benefits~~an individual who is not actively participating in the main plan under chapter 54-52 who has an account intact in the main plan under chapter 54-52.
3. "Eligible employee" means ~~a permanent state employee, except an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board, who is eighteen years or more of age and who is in a position not classified by North Dakota human resource management services. If a participating member loses permanent employee status and becomes a temporary employee, the member may still participate in the defined contribution retirement plan, for employees who become participating members after December 31, 2024, has the same meaning as provided under section 54-52-02.15. For employees who elected to join the defined contribution retirement plan under this chapter before January 1, 2025, the term includes a permanent state employee, except an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board of higher education, who is at least eighteen years of age and who is in a position not classified by the North Dakota human resource management services.~~
4. "Employee" means ~~any person~~an individual employed by the ~~state~~state governmental unit, whose compensation is paid out of ~~state~~the governmental unit's funds, or funds controlled or administered by the ~~state~~state governmental unit or paid by the federal government through any of its executive or administrative officials.
5. "Employer" means ~~the state of North Dakota~~a governmental unit.
6. "Governmental unit" means the state of North Dakota or a participating political subdivision of the state.
7. "Normal retirement date" is determined based on subsection 3 of section 54-52-17.
8. "Participating member" means an eligible employee who ~~elects to participate~~participates in the defined contribution retirement plan established under this chapter.
- 7-9. "Permanent employee" means ~~a state~~an employee whose services are not limited in duration and who is filling an approved and regularly funded position and is employed twenty hours or more per week and at least five months each year.
- 8-10. "Temporary employee" means ~~a governmental unit employee who is not an eligible employee due to not meeting the qualification of being a permanent employee, and who is not actively contributing to another employer-sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.~~

11. "Wages" and "salaries" means earnings in eligible employment under this chapter reported as salary on a federal income tax withholding statement plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement, incentive pay, severance pay, medical insurance, workforce safety and insurance benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between an employee and a participating employer. Bonuses may be considered as salary under this section if reported and annualized pursuant to rules adopted by the board.

<sup>280</sup> **SECTION 15. AMENDMENT.** Section 54-52.6-02 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.6-02. Election through December 31, 2024.**

1. The board shall provide an opportunity for each eligible employee who is a member of the public employees retirement system on September 30, 2001, and who has not made a written election under this section to transfer to the defined contribution retirement plan before October 1, 2001, to elect in writing to terminate membership in the public employees retirement system and elect to become a participating member under this chapter. Except as provided in section 54-52.6-03, an election made by an eligible employee under this section is irrevocable. The board shall accept written elections under this section from eligible employees during the period beginning on July 1, 1999, and ending 12:01 a.m. December 14, 2001. An eligible employee who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. An eligible employee who makes and files a written election under this section ceases to be a member of the public employees retirement system effective twelve midnight December 31, 2001; becomes a participating member in the defined contribution retirement plan under this chapter effective 12:01 a.m. January 1, 2002; and waives all of that person's rights to a pension, annuity, retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective December 31, 2001. This section does not affect ~~a person's~~ an individual's right to health benefits or retiree health benefits under chapter 54-52.1. An eligible employee who is first employed and entered upon the payroll of that person's employer after September 30, 2001, and before January 1, 2025, may make an election to participate in the defined contribution retirement plan established under this chapter at any time during the first six months after the date of employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window.
2. If an individual who is a deferred member of the public employees retirement system on September 30, 2001, is re-employed before January 1, 2025, and by virtue of that employment is again eligible for membership in the public employees retirement system under chapter 54-52, the individual may elect in

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<sup>280</sup> Section 54-52.6-02 was also amended by section 46 of Senate Bill No. 2015, chapter 47.

writing to remain a member of the public employees retirement system or if eligible to participate in the defined contribution retirement plan established under this chapter to terminate membership in the public employees retirement system and become a participating member in the defined contribution retirement plan established under this chapter. An election made by a deferred member under this section is irrevocable. The board shall accept written elections under this section from a deferred member during the period beginning on the date of the individual's re-employment and ending upon the expiration of six months after the date of that re-employment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window. A deferred member who makes and files a written election to remain a member of the public employees retirement system retains all rights and is subject to all conditions as a member of that retirement system. A deferred member who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. A deferred member who makes and files a written election to terminate membership in the public employees retirement system ceases to be a member of the public employees retirement system effective on the last day of the payroll period that includes the date of the election; becomes a participating member in the defined contribution retirement plan under this chapter effective the first day of the payroll immediately following the date of the election; and waives all of that person's rights to a pension, an annuity, a retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective the last day of the payroll that includes the date of the election. This section does not affect any right to health benefits or retiree health benefits to which the deferred member may otherwise be entitled.

3. An eligible employee who elects under this section to participate in the retirement plan established under this chapter must remain a participant even if that employee returns to the classified service or becomes employed by a political subdivision that participates in the public employees retirement system. The contribution amount must be as provided in this chapter, regardless of the position in which the employee is employed. Notwithstanding the irrevocability provisions of this chapter, if a member who elects to participate in the retirement plan established under this chapter becomes a supreme or district court judge, becomes a member of the highway patrol, becomes employed in a position subject to teachers' fund for retirement membership, or becomes an employee of the board of higher education or state institution under the jurisdiction of the board of higher education who is eligible to participate in an alternative retirement program established under subsection 6 of section 15-10-17, the member's status as a member of the defined contribution retirement plan is suspended, and the member becomes a new member of the retirement plan for which that member's new position is eligible. The member's account balance remains in the defined contribution retirement plan, but no new contributions may be made to that account. The member's service credit and salary history that were forfeited as a result of the member's transfer to the defined contribution retirement plan remain forfeited, and service credit accumulation in the new retirement plan begins from the first day of employment in the new position. If the member later returns to employment that is eligible for the defined contribution retirement plan, the member's suspension must be terminated, the member again becomes a

member of the defined contribution retirement plan, and the member's account resumes accepting contributions. At the member's option, and pursuant to rules adopted by the board, the member may transfer any available balance as determined by the provisions of the alternate retirement plan into the member's account under this chapter.

4. After consultation with its actuary, the board shall determine the method by which a participating member or deferred member may make a written election under this section. If the participating member or deferred member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.
5. If the board receives notification from the internal revenue service that this section or any portion of this section will cause the public employees retirement system or the retirement plan established under this chapter to be disqualified for tax purposes under the Internal Revenue Code, then the portion that will cause the disqualification does not apply.
6. A participating member under this section who becomes a temporary employee may still participate in the defined contribution retirement plan upon filing an election with the board within one hundred eighty days of transferring to temporary employee status. The participating member may not become a member of the defined benefit plan as a temporary employee.
  - a. ~~The temporary employee electing to participate in the defined contribution retirement plan shall pay monthly to the fund an amount equal to eight and twelve hundredths percent times the temporary employee's present monthly salary. The amount required to be paid by a temporary employee increases by two percent times the temporary employee's present monthly salary beginning with the monthly reporting period of January 2012, and with an additional increase of two percent, beginning with the monthly reporting period of January 2013, and with an additional increase of two percent, beginning with the monthly reporting period of January 2014. The temporary employee shall also pay the required monthly contribution to the retiree health benefit fund established under section 54-52.1-03.2. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2 into the plan as provided under section 54-52.6-09.6.~~
  - b. An employer may not pay the temporary employee's contributions.
  - c. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.
7. A former participating member under this section who has accepted a retirement distribution pursuant to section 54-52.6-13 and who subsequently becomes employed by an entity different from the employer with which the member was employed at the time the member retired but which does participate in any state-sponsored retirement plan may, before re-enrolling in the defined contribution retirement plan, elect to permanently waive future participation in the defined contribution retirement plan, whatever plan in which the new employing entity participates, and the retiree health program and maintain that member's retirement status. Neither the member nor the

employer are required to make any future retirement contributions on behalf of that employee.

8. After December 31, 2024, an eligible employee is no longer allowed to elect participation under this section.

<sup>281</sup> **SECTION 16.** Section 54-52.6-02.1 of the North Dakota Century Code is created and enacted as follows:

**54-52.6-02.1. Participation in defined contribution retirement plan.**

1. Except as otherwise provided under section 54-52-02.5 or 54-52-02.15 or this chapter, effective January 1, 2025, an eligible employee who is first enrolled shall participate in the defined contribution retirement plan under this chapter.
2. A temporary employee may elect to participate in the defined contribution retirement plan as provided under section 54-52.6-09.6.
3. A county elected official may elect to participate in the defined contribution retirement plan as provided under section 54-52-02.11.
4. A nonstate appointed official shall participate in the defined contribution retirement plan as provided under section 54-52-02.12.

<sup>282</sup> **SECTION 17.** Section 54-52.6-02.2 of the North Dakota Century Code is created and enacted as follows:

**54-52.6-02.2. Election after December 31, 2024 - Additional employer contribution.**

1. As used in this section, "eligible employee" means a permanent state employee who on December 31, 2024, is a participating member of the public employees retirement system main system plan under chapter 54-42, who has been a participating member under chapter 54-52 for no more than five years, and who is at least eighteen years of age.
2. The board shall provide a three-month election period, from January 1, 2025, through March 31, 2025, for an eligible employee to transfer to the defined contribution plan under this chapter pursuant to the rules and policies adopted by the board.
  - a. An election under this section made by a member of the public employees retirement system under chapter 54-52 to transfer to the defined contribution retirement plan under this chapter is irrevocable.
  - b. For an eligible employee who elects to transfer from the public employees retirement system under chapter 54-52 to the defined contribution retirement plan under this chapter, the board shall transfer a lump sum amount from the public employees retirement system fund to the member's account in the defined contribution retirement plan under this chapter. However, if the eligible employee terminates employment before

<sup>281</sup> Section 54-52.6-02.1 was amended by section 47 of Senate Bill No. 2015, chapter 47.

<sup>282</sup> Section 54-52.6-02.2 was amended by section 48 of Senate Bill No. 2015, chapter 47.

receiving the lump sum transfer under this section, the election made is ineffective and the eligible employee remains a member of the public employees retirement system under chapter 54-52 and retains all the rights and privileges under that chapter.

- c. The board shall calculate the lump sum amount to be transferred based on the actuarial present value of the eligible employee's accumulated benefit obligation under the public employees retirement system based on the assumption the eligible employee will retire under the earlier applicable normal retirement age, plus interest from January 1, 2025, to the date of transfer, at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election.
  - d. This section does not affect an eligible individual's right to health benefits under chapter 54-52.1.
3. The state employer of an eligible employee who elects under this section to participate in the defined contribution retirement plan under this chapter shall pay an additional annual contribution of three thousand three hundred and thirty-three dollars for up to three years. Under this subsection, the employer shall pay the additional contribution each year the eligible employee continues permanent employment with the state, beginning January 2026, and extending no further than January 2028.
  4. If the board receives notification from the internal revenue service that this section or any portion of this section will cause the public employees retirement system or the retirement plan established under this chapter to be disqualified for tax purposes under the Internal Revenue Code, that portion that will cause the disqualification does not apply.

<sup>283</sup> **SECTION 18. AMENDMENT.** Section 54-52.6-03 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.6-03. Transfer of accumulated fund balances.**

1. For an individual who elects under section 54-52.6-02 to terminate membership in the public employees retirement system under chapter 54-52, the board shall transfer a lump sum amount from the retirement fund to the participating member's account in the defined contribution retirement plan under this chapter. However, if the individual terminates employment ~~prior to~~before receiving the lump sum transfer under this section, the election made under section 54-52.6-02 is ineffective and the individual remains a member of the public employees retirement system under chapter 54-52 and retains all the rights and benefits provided under that chapter. The board shall calculate the amount to be transferred for persons employed before October 1, 2001, using the two following formulas, and shall transfer the greater of the two amounts obtained:
  - 1-a. The actuarial present value of the individual's accumulated benefit obligation under the public employees retirement system based on the assumption that the individual will retire under the earliest applicable normal retirement age, plus interest from January 1, 2001, to the date of

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<sup>283</sup> Section 54-52.6-03 was also amended by section 49 of Senate Bill No. 2015, chapter 47.

transfer, at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election; or

- 2-b. The actual employer contribution made, less vested employer contributions made pursuant to section 54-52-11.1, plus compound interest at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election plus the employee account balance.
- 2. The board shall calculate the amount to be transferred for persons employed after September 30, 2001, and before January 1, 2025, using only the formula contained in subdivision b of subsection 21.

**SECTION 19. AMENDMENT.** Section 54-52.6-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.6-05. Direction of investments.**

- 1. Each participating member shall direct the investment of the individual's accumulated employer and employee contributions and earnings to one or more investment choices within available categories of investment provided by the board.
- 2. The board shall provide an investment menu of investment options. In establishing the investment options, the board shall:
  - a. Include predetermined investment portfolio options constructed to reflect different risk profiles that automatically reallocate and rebalance contributions as a participating member ages.
  - b. Allow a participating member to construct an investment portfolio using some or all of the investment options.
- 3. The board shall provide a diversified menu of mutual funds and in-plan lifetime annuity options, either fixed, variable, or a combination of both. In selecting an annuity provider the board shall comply with section 54-52.6-05.1.

**SECTION 20.** Section 54-52.6-05.1 of the North Dakota Century Code is created and enacted as follows:

**54-52.6-05.1. Annuity provider - Qualifications.**

- 1. The board shall select one or more annuity providers to provide the annuity options under this chapter.
- 2. In selecting an annuity provider under this section, the board shall:
  - a. Determine whether the annuity provider and the provider's subsidiaries and affiliates have appropriate financial strength and stability at the time of selection and during the term of contract with the board.
    - (1) The board may require the provider to provide the board with written representation:
      - (a) The provider is in compliance with title 26.1.



The board shall promptly shall credit the plan account of a participating member who makes an election under this chapter ~~section 54-52.6-02~~ to terminate membership in the public employees retirement system under chapter 54-52 with any amount transferred from the public employees retirement system.

<sup>284</sup> **SECTION 22. AMENDMENT.** Section 54-52.6-09 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.6-09. Contributions - Penalty.**

1. Each

- a. A participating member who first joined the defined contribution retirement plan before January 1, 2025, and an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2, shall contribute monthly seven percent of the monthly salary or wage paid to the participant.
- b. A participating member who first joined the defined contribution retirement plan after December 31, 2024, except for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2, shall contribute monthly four percent of the monthly salary or wage paid to the participant, and this. In addition, the participating member may elect to contribute monthly up to an additional three percent of the monthly salary or wage paid to the participant.
- c. This assessment must be deducted from the participant's salary in equal monthly installments commencing with the first month of participation in the defined contribution retirement plan established under this chapter. Participating member contributions increase by one percent of the monthly salary or wage paid to the participant beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the reporting period of January 2013; and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.

2. The

- a. For a participating member who first joined the defined contribution retirement plan before January 1, 2025, and for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2, the employer shall contribute an amount equal to seven and twelve-hundredths percent of the monthly salary or wage of the participating member.
- b. For a participating member who first joined the defined contribution retirement plan after December 31, 2024, except for an employee who elects to participate in the defined contribution plan under section 54-52.6-02.2, the employer shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member, plus up to an additional three percent as an employer matching contribution calculated based on the participating member's election under subdivision b of subsection 1. Employer contributions increase by one

<sup>284</sup> Section 54-52.6-09 was also amended by section 50 of Senate Bill No. 2015, chapter 47.

~~percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the monthly reporting period of January 2013; and with an additional increase of one percent, beginning with the monthly reporting period of January 2014.~~

- c. For ~~members~~ a participating member first enrolled after December 31, 2019, the employer contribution includes an additional increase of one and fourteen-hundredths percent.
  - d. If the employee's contribution is paid by the employer under subsection 3, the employer shall contribute, in addition, an amount equal to the required employee's contribution. Monthly, the employer shall pay such contribution into the participating member's account from the employer's funds appropriated for payroll and salary or any other funds available for such purposes.
  - e. If the employer fails to pay the contributions monthly, or fails to otherwise comply with the board's established wage reporting or payroll reporting process requirements, the employer is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction of a month after the payment became due. In lieu of assessing a civil penalty or one percent per month, or both, interest at the actuarial rate of return may be assessed for each month the contributions are delinquent. If contributions are paid within ninety days of the date the contributions became due, penalty and interest to be paid on delinquent contributions may be waived.
3. Each employer, at its option, may pay the employee contributions required by this section for all compensation earned after December 31, 1999. The amount paid must be paid by the employer in lieu of contributions by the employee. If the employer decides not to pay the contributions, the amount that would have been paid will 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. Contributions paid by the employer may not be included as gross income of the employee in determining tax treatment under this code and the federal 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. 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 combination of a reduction in gross salary and offset against future salary increases. Employee contributions paid by the employer must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made before the date on which employee contributions were assumed by the employer. An employer shall exercise its option under this subsection by reporting its choice to the board in writing.

**SECTION 23.** Section 54-52.6-09.5 of the North Dakota Century Code is created and enacted as follows:

**54-52.6-09.5. Employer contribution for defined benefit plan.**

In addition to the employer contribution under section 54-52.6-09, a state employer shall contribute to the defined benefit retirement plan under chapter 54-52, an amount equal to the contribution rate calculated under section 54-52-06 less the amount of the required employer contribution under sections 54-52.2-09 and 54-52.6-09. If a state employer uses federal funds to pay any or all of an employee's wages, the employer shall use state funds to pay this additional contribution.

**SECTION 24.** Section 54-52.6-09.6 of the North Dakota Century Code is created and enacted as follows:

**54-52.6-09.6. Participation by temporary employees.**

A temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the defined contribution retirement plan under this chapter. Monthly, the temporary employee shall contribute an amount equal to nine and twenty-six hundredths percent times the temporary employee's present monthly salary, and may elect to contribute up to an additional six percent. An employer may not pay the temporary employee's contribution. A temporary employee may continue to participate as a temporary employee until termination of employment or reclassification of the temporary employee as a permanent employee.

**SECTION 25. AMENDMENT.** Section 54-52.6-10 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.6-10. Vesting.**

1. A participating member is immediately one hundred percent vested in that member's contributions made to that member's account under this chapter. A participating member vests in the employer contributions made on that member's behalf to an account under this chapter according to the following schedule:
  - 1-a. Upon completion of two years of service, fifty percent.
  - 2-b. Upon completion of three years of service, seventy-five percent.
  - 3-c. Upon completion of four years of service, one hundred percent.
2. A participating member also becomes one hundred percent vested in the employer contributions upon reaching age sixty-five. A participating member who was a member or deferred member of the public employees retirement system under chapter 54-52 who makes an election to participate in the defined contribution retirement plan pursuant to this chapter under section 54-52.6-02 or 54-52.6-02.2 must be credited with the years of service accrued under the public employees retirement system on the effective date of participation in the defined contribution retirement plan for the purpose of meeting vesting requirements for benefits under this section. Any forfeiture as a result of the failure of a participating member to vest in the employer contribution must be deposited in the administrative expenses account.

**SECTION 26. AMENDMENT.** Section 54-52.6-13 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.6-13. Distributions.**

1. A participating member is eligible to receive distribution of that ~~person's~~individual's accumulated balance in the plan upon becoming a former participating member.
2. Upon the death of a participating member or former participating member, the board shall pay the accumulated account balance of that deceased participant to the deceased participant's refund beneficiary, if any, as provided in this subsection. If the deceased participant designated an alternate refund beneficiary with the surviving spouse's written consent, the board shall distribute the accumulated balance to the named beneficiary. If the deceased participant named more than one primary beneficiary with the surviving spouse's written consent, the board shall pay the accumulated account balance to the named primary beneficiaries in the percentages designated by the deceased participant or, if the deceased participant had not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the deceased participant, the board shall pay the predeceased beneficiary's share to the remaining primary beneficiaries. If any beneficiary survives the deceased participant, yet dies before distribution of the beneficiary's share, the beneficiary must be treated as if the beneficiary predeceased the deceased participant. If there is no remaining primary beneficiary, the board shall pay the accumulated account balance of that deceased participant to the contingent beneficiaries in the same manner. If there is no remaining designated beneficiary, the board shall pay the accumulated account balance of that deceased participant to the deceased participant's estate. If the deceased participant had not designated an alternate refund beneficiary or the surviving spouse is the refund beneficiary, the surviving spouse of the deceased participant may select a form of payment as provided in subdivision d of subsection 3.
3. a. A former participating member may elect one or a combination of several of the following methods of distribution of the accumulated balance:
  - a- (1) A lump sum distribution to the recipient.
  - b- (2) A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.
  - e- (3) Periodic distributions, including annuities, as authorized by the board.
  - d- (4) No current distribution, in which case the accumulated balance must remain in the plan until the former participating member or refund beneficiary elects a method or methods of distribution under this section, to the extent allowed by federal law.
- b. A surviving spouse beneficiary may elect one or a combination of several of the methods of distribution provided in subdivisions a, b, or e paragraph 1, 2, or 3 of subdivision a if the surviving spouse is the sole refund beneficiary. If the surviving spouse is not the sole refund beneficiary, the refund beneficiary may only choose a lump sum distribution of the accumulated balance.
4. If the former participating member's vested account balance is less than one thousand dollars, the board ~~shall~~ automatically shall refund the member's vested account balance upon termination of employment. The member may waive the refund if the member submits a written statement to the board,

within one hundred twenty days after termination, requesting that the member's vested account balance remain in the plan.

**SECTION 27. AMENDMENT.** Section 54-52.6-15 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.6-15. Board to provide information.**

1. The board shall provide information to employees who are eligible under section 54-52.6-02 or 54-52.6-02.2 to elect to become participating members under this chapter. The information must include at a minimum the employee's current account balance, the assumption of investment risk under a defined contribution retirement plan, administrative and investment costs, coordination of benefits information, and a comparison of projected retirement benefits under the public employees retirement system under chapter 54-52 and the retirement plan established under this chapter.
2. The board, or the board's vendor, shall provide to participating members:
  - a. Enrollment information that includes benefits of the defined contribution retirement plan, investment options available, the assumption of risk, and administrative and investment costs.
  - b. Ongoing investment and retirement income planning, including education on how to set, measure, and adjust income and saving goals based on desired retirement income and financial objectives, actual behavior, and changing circumstances.
  - c. Retirement income education, including distribution options available and in-plan annuitization options.
  - d. Advice and guidance information, tools, and services primarily focused on long-term planning and investing and life events that potentially influence and impact retirement savings.
3. Notwithstanding any other provision of law, the board is not liable for any election or investment decision made by an employee based upon information provided to an employee under this chapter.

**SECTION 28. AMENDMENT.** Section 54-52.6-19 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.6-19. Overpayments.**

The board has the right of setoff to recover overpayments made under this chapter and to satisfy any claims arising from embezzlement or fraud committed by a participating member, deferred member under this chapter, refund beneficiary, or other person ~~whethat~~ has a claim to a distribution or any other benefit from a plan governed by this chapter.

**SECTION 29.** Section 54-52.6-22 of the North Dakota Century Code is created and enacted as follows:

**54-52.6-22. Report to employee benefits programs committee.**

Annually, the board shall provide a report to the employee benefits programs committee on the status of the defined contribution retirement plan under this chapter.

**SECTION 30.** Section 54-52.6-23 of the North Dakota Century Code is created and enacted as follows:

**54-52.6-23. Savings clause - Plan modification.**

If the board determines 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 as will comply with those federal statutes or rules, subject to the approval of the employee benefits programs committee. Any plan modifications made by the board pursuant to 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.

<sup>285</sup> **SECTION 31. AMENDMENT.** Section 57-51.1-07.5 of the North Dakota Century Code is amended and reenacted as follows:

**57-51.1-07.5. State share of oil and gas taxes - Deposits.**

From the revenues designated for deposit in the state general fund under chapters 57-51 and 57-51.1, the state treasurer shall deposit the revenues received each biennium in the following order:

1. The first two hundred million dollars into the state general fund;
2. The next two hundred million dollars into the tax relief fund;
3. The next seventy-five million dollars into the budget stabilization fund, but not in an amount that would bring the balance in the fund to more than the limit in section 54-27.2-01;
4. The next two hundred million dollars into the state general fund;
5. The next ten million dollars into the lignite research fund;
6. The next twenty million dollars into the state disaster relief fund, but not in an amount that would bring the unobligated balance in the fund to more than twenty million dollars;
7. The next four hundred million dollars into the strategic investment and improvements fund;
8. The next sixty-five million dollars to the public employees retirement fund for the main system plan;
9. The next fifty-nine million seven hundred fifty thousand dollars, or the amount necessary to provide for twice the amount of the distributions under subsection 2 of section 57-51.1-07.7, into the funds designated for infrastructure development in non-oil-producing counties under sections 57-51.1-07.7 and 57-51.1-07.8 with fifty percent deposited into the municipal infrastructure fund and fifty percent deposited into the county and township infrastructure fund;

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<sup>285</sup> Section 57-51.1-07.5 was also amended by section 1 of Senate Bill No. 2367, chapter 559.

9-10. The next one hundred seventy million two hundred fifty thousand dollars or the amount necessary to provide a total of two hundred thirty million dollars into the funds designated for infrastructure development in non-oil-producing counties under sections 57-51.1-07.7 and 57-51.1-07.8 with fifty percent deposited into the municipal infrastructure fund and fifty percent deposited into the county and township infrastructure fund;

40-11. The next twenty million dollars into the airport infrastructure fund; and

44-12. Any additional revenues into the strategic investment and improvements fund.

**SECTION 32. REPEAL.** Sections 54-52-06.5 and 54-52.6-03 of the North Dakota Century Code are repealed.

**SECTION 33. LEGISLATIVE MANAGEMENT STUDY - PUBLIC EMPLOYEES RETIREMENT SYSTEM RETIREMENT PLAN.** During the 2023-24 interim, the legislative management shall study the public employees retirement system main system plan, including funding options and contributions by political subdivisions. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 34. LEGISLATIVE MANAGEMENT STUDY - PUBLIC EMPLOYEES RETIREMENT SYSTEM MAIN RETIREMENT PLAN.** During the 2023-24 interim, the legislative management shall study best practices for public employee retirement plans, including defined benefit plans, defined contribution plans, and hybrid plans such as side-by-side hybrid plans, cash benefit plans, and stacked hybrid plans. The study must include development of legislation to implement the retirement plan best suited to meet the needs of the state, political subdivisions, and public employees. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 35. TRANSFER - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND TO PUBLIC EMPLOYEES RETIREMENT SYSTEM FUND.** The office of management and budget shall transfer \$135,000,000 from the strategic investment and improvements fund to the public employees retirement system fund, for the purpose of reducing the unfunded liability of the public employees retirement system main system plan, during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 36. APPLICATION.** Subdivision a of subsection 1 of section 54-52-06, as amended under section 10 of this Act, applies to employer contributions beginning January 2026, using a contribution rate based on the July 1, 2024, actuarial analysis.

**SECTION 37. EFFECTIVE DATE.** Sections 9, 31, 33, 34, and 35 of this Act become effective August 1, 2023; sections 1 through 8, sections 11 through 22, sections 24 through 30, and section 32 of this Act become effective January 1, 2025; and sections 10, 23, and 36 of this Act become effective January 1, 2026.

Approved April 29, 2023

Filed May 1, 2023

## CHAPTER 515

### HOUSE BILL NO. 1309

(Representatives Boschee, Heinert, Martinson, Nathe, M. Ruby, Schneider)  
(Senators Braunberger, Cleary, Dever, K. Roers)

AN ACT to amend and reenact section 54-52-06.4, subdivisions e and g of subsection 3 of section 54-52-17, and subsection 4 of section 54-52-17 of the North Dakota Century Code, relating to retirement benefits for peace officers employed by the bureau of criminal investigation.

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

<sup>286</sup> **SECTION 1. AMENDMENT.** Section 54-52-06.4 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-06.4. Contribution by peace officers employed by the bureau of criminal investigation or security officers employed by the national guard - Employer contribution.**

1. a. 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. Peace officer contributions increase by one percent of the member's monthly salary beginning with the monthly reporting period of January 2012, ~~and~~ with an additional increase of one percent, beginning with the reporting period of January 2013; with an additional increase of one percent, beginning with the reporting period of January 2024; and with an additional increase of one percent, beginning with the reporting period of January 2025.
  - b. Effective August 1, 2015, each national guard security officer who is a member of the public employee's retirement system is assessed and monthly shall pay six percent of the employee's monthly salary. National guard security officer contributions decrease by one-half of one percent of the member's monthly salary beginning with the monthly reporting period of January 2016.
  - c. The assessment under this subsection must be deducted and retained out of the employee's salary in equal monthly installments.
2. The employer of a peace officer/officer employed by the bureau of criminal investigation or national guard security officer's—employer/officer 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 or security officer's assessment is paid by the employer under subsection 3 of section 54-52-05,

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<sup>286</sup> Section 54-52-06.4 was also amended by section 2 of House Bill No. 1183, chapter 513, and section 42 of Senate Bill No. 2015, chapter 47.

the employer shall contribute, in addition, an amount equal to the required peace officer's or security officer's assessment.

<sup>287</sup> **SECTION 2. AMENDMENT.** Subdivision e of subsection 3 of section 54-52-17 of the North Dakota Century Code is amended and reenacted as follows:

e. Normal retirement date for a peace officer employed by the bureau of criminal investigation is:

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(1) (a) ~~For a member employed before August 1, 2023, 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 eligible years of employment; and~~

(b) For a member employed after July 31, 2023, 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 ten eligible years of employment; 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.

<sup>288</sup> **SECTION 3. AMENDMENT.** Subdivision g of subsection 3 of section 54-52-17 of the North Dakota Century Code is amended and reenacted as follows:

g. (1) ~~Early retirement date, except for a national guard security officer or firefighter, a firefighter employed by a political subdivision, or a peace officer, or correctional officer employed by the bureau of criminal investigation or by a political subdivision, or a peace officer employed by the bureau of criminal investigation, 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.~~

(2) 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.

(3) ~~For a firefighter employed by a political subdivision or 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, firefighter,~~

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<sup>287</sup> Section 54-52-17 was also amended by section 3 of House Bill No. 1183, chapter 513, section 4 of House Bill No. 1183, chapter 513, section 3 of House Bill No. 1309, chapter 515, section 4 of House Bill No. 1309, chapter 515, and section 43 of Senate Bill No. 2015, chapter 47.

<sup>288</sup> Section 54-52-17 was also amended by section 3 of House Bill No. 1183, chapter 513, section 4 of House Bill No. 1183, chapter 513, section 2 of House Bill No. 1309, chapter 515, section 4 of House Bill No. 1309, chapter 515, and section 43 of Senate Bill No. 2015, chapter 47.

or correctional officer attains the age of fifty years and has completed at least three years of eligible employment.

(4) For a peace officer employed by the bureau of criminal investigation:

(a) Before August 1, 2023, early retirement date is the first day of the month next following the month in which the peace officer attains the age of fifty years and has completed at least three years of eligible employment.

(b) After July 31, 2023, early retirement date is the first day of the month next following the month in which the peace officer attains the age of fifty years and has completed at least ten years of eligible employment.

<sup>289</sup> **SECTION 4. AMENDMENT.** Subsection 4 of section 54-52-17 of the North Dakota Century Code is amended and reenacted as follows:

4. The board shall calculate retirement benefits as follows:

- a. Normal retirement benefits for all retirees, except supreme and district court judges and peace officers employed by the bureau of criminal investigation, reaching normal retirement date equal an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which is determined as follows:

(1) For members first enrolled:

(a) Before January 1, 2020, service benefit equals two percent of final average salary multiplied by the number of years of service employment.

(b) After December 31, 2019, service benefit equals one and seventy-five hundredths percent of final average salary multiplied by the number of years of service employment.

(2) Prior service benefit equals two percent of final average salary multiplied by the number of years of prior service employment.

- b. Normal retirement benefits for all supreme and district court judges under the public employees retirement system reaching normal retirement date equal an annual amount, payable monthly, comprised of a benefit as defined in this chapter, determined as follows:

(1) Benefits must be calculated from the time of appointment or election to the bench and must equal three and one-half percent of final average salary multiplied by the first ten years of judicial service, two and eighty hundredths percent of final average salary multiplied by the second ten years of judicial service, and one and one-fourth percent of final average salary multiplied by the number of years of judicial service exceeding twenty years.

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<sup>289</sup> Section 54-52-17 was also amended by section 3 of House Bill No. 1183, chapter 513, section 4 of House Bill No. 1183, chapter 513, section 2 of House Bill No. 1309, chapter 515, section 3 of House Bill No. 1309, chapter 515, and section 43 of Senate Bill No. 2015, chapter 47.

- (2) Service benefits must include, in addition, an amount equal to the percent specified in subdivision a of final average salary multiplied by the number of years of nonjudicial employee service and employment.
- c. Normal retirement benefits for a peace officer employed by the bureau of criminal investigation reaching the normal retirement date equals an annual amount, payable monthly, comprised of a service benefit and a prior service benefit determined as follows:
- (1) The first twenty years of credited service multiplied by three percent of final average salary.
- (2) For years in excess of twenty years of credited service multiplied by one and seventy-five hundredths percent of final average salary.
- d. Postponed retirement benefits are calculated as for single life benefits for those members who retired on or after July 1, 1977.
- d.e. Early retirement benefits are calculated as for single life benefits accrued to the date of termination of employment, but must be actuarially reduced to account for benefit payments beginning before the normal retirement date, as determined under subsection 3. Except for a national guard security officer or firefighter, a firefighter employed by a political subdivision, a peace officer or correctional officer employed by the bureau of criminal investigation or by a political subdivision, or a supreme court or district court judge, early retirement benefits for members first enrolled after December 31, 2015, are calculated for single life benefits accrued to the date of termination of employment, but must be reduced by fixed rate of eight percent per year to account for benefit payments beginning before the normal retirement date. A retiree, other than a supreme or district court judge, is eligible for early retirement benefits only after having completed three years of eligible employment. A supreme or district court judge retiree is eligible for early retirement benefits only after having completed five years of eligible employment.
- e.f. Except for supreme and district court judges, disability retirement benefits are twenty-five percent of the member's final average salary. Disability retirement benefits for supreme and district court judges are seventy percent of final average salary reduced by the member's primary social security benefits and by any workforce safety and insurance benefits paid. The minimum monthly disability retirement benefit under this section is one hundred dollars.

Approved April 12, 2023

Filed April 13, 2023

## CHAPTER 516

### SENATE BILL NO. 2140

(Senators Mathern, Dever)  
(Representatives Hanson, McLeod, Pyle, Schauer)

AN ACT to create and enact a new section to chapter 54-52.1 of the North Dakota Century Code, relating to public employee insulin drug and supplies benefits; to amend and reenact subsection 2 of section 26.1-36.6-03 of the North Dakota Century Code, relating to self-insurance health plans; to provide for a report; to provide for application; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 26.1-36.6-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The following health benefit provisions applicable to a group accident and health insurance policy under chapter 26.1-36 apply to a self-insurance health plan and are subject to the jurisdiction of the commissioner: sections 26.1-36-06, 26.1-36-06.1, 26.1-36-07, 26.1-36-08, 26.1-36-08.1, 26.1-36-09, 26.1-36-09.1, 26.1-36-09.2, 26.1-36-09.3, 26.1-36-09.5, 26.1-36-09.6, 26.1-36-09.7, 26.1-36-09.8, 26.1-36-09.9, 26.1-36-09.10, 26.1-36-09.11, 26.1-36-09.12, 26.1-36-09.13, 26.1-36-09.14, 26.1-36-09.15, 26.1-36-11, 26.1-36-12.2, 26.1-36-20, 26.1-36-21, 26.1-36-22, 26.1-36-23.1, and 26.1-36-43. Section 2 of this Act applies to a self-insurance health plan and is subject to the jurisdiction of the commissioner.

<sup>290</sup> **SECTION 2.** A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

#### **Health insurance benefits coverage - Insulin drug and supply out-of-pocket limitations.**

1. As used in this section:
  - a. "Insulin drug" means a prescription drug that contains insulin and is used to treat a form of diabetes mellitus. The term does not include an insulin pump, an electronic insulin-administering smart pen, or a continuous glucose monitor, or supplies needed specifically for the use of such electronic devices. The term includes insulin in the following categories:
    - (1) Rapid-acting insulin;
    - (2) Short-acting insulin;
    - (3) Intermediate-acting insulin;
    - (4) Long-acting insulin;

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<sup>290</sup> Section 54-52.1-04.18 was amended by section 38 of Senate Bill No. 2012, chapter 44.

- (5) Premixed insulin product;
  - (6) Premixed insulin/GLP-1 RA product; and
  - (7) Concentrated human regular insulin.
- b. "Medical supplies for insulin dosing and administration" means supplies needed for proper insulin dosing, as well as supplies needed to detect or address medical emergencies in an individual using insulin to manage diabetes mellitus. The term does not include an insulin pump, an electronic insulin-administering smart pen, or a continuous glucose monitor, or supplies needed specifically for the use of such electronic devices. The term includes:
- (1) Blood glucose meters;
  - (2) Blood glucose test strips;
  - (3) Lancing devices and lancets;
  - (4) Ketone testing supplies, such as urine strips, blood ketone meters, and blood ketone strips;
  - (5) Glucagon, in injectable and nasal forms;
  - (6) Insulin pen needles; and
  - (7) Insulin syringes.
- c. "Pharmacy or distributor" means a pharmacy or medical supply company, or other medication or medical supply distributor filling a covered individual's prescriptions.
2. The board shall provide health insurance benefits coverage that provides for insulin drug and medical supplies for insulin dosing and administration which complies with this section.
3. The coverage must limit out-of-pocket costs for a thirty-day supply of:
- a. Covered insulin drugs which may not exceed twenty-five dollars per pharmacy or distributor, regardless of the quantity or type of insulin drug used to fill the covered individual's prescription needs.
  - b. Covered medical supplies for insulin dosing and administration, the total of which may not exceed twenty-five dollars per pharmacy or distributor, regardless of the quantity or manufacturer of supplies used to fill the covered individual's prescription needs.
4. The coverage may not allow a pharmacy benefits manager or the pharmacy or distributor to charge, require the pharmacy or distributor to collect, or require a covered individual to make a payment for a covered insulin drug or medical supplies for insulin dosing and administration in an amount that exceeds the out-of-pocket limits set forth under subsection 3.
5. The coverage may not impose a deductible, copayment, coinsurance, or other cost-sharing requirement that causes out-of-pocket costs for prescribed insulin

or medical supplies for insulin dosing and administration to exceed the amount set forth under subsection 3.

6. Subsection 3 does not require the coverage to implement a particular cost-sharing structure and does not prevent the limitation of out-of-pocket costs to less than the amount specified under subsection 3. Subsection 3 does not limit out-of-pocket costs on an insulin pump, an electronic insulin-administering smart pen, or a continuous glucose monitor. This section does not limit whether coverage classifies an insulin pump, an electronic insulin-administering smart pen, or a continuous glucose monitor as a drug or as a medical device or supply.

**SECTION 3. APPLICATION.** This Act applies to public employees retirement system health benefits coverage that begins after June 30, 2023, and which does not extend past June 30, 2025.

**SECTION 4. PUBLIC EMPLOYEES RETIREMENT SYSTEM - INSULIN DRUG AND SUPPLIES BENEFITS - REPORT.** Pursuant to section 54-03-28, the public employees retirement system shall prepare and submit for introduction a bill to the sixty-ninth legislative assembly to repeal the expiration date for this Act and to extend the coverage of insulin drug and supplies benefits to all group and individual health insurance policies. The public employees retirement system shall append a report to the bill regarding the effect of the insulin drug and supplies benefits requirement on the system's health insurance programs, information on the utilization and costs relating to the coverage, and a recommendation regarding whether the coverage should be continued.

**SECTION 5. EXPIRATION DATE.** This Act is effective through July 31, 2025, and after that date is ineffective.

Approved April 14, 2023

Filed April 18, 2023

## CHAPTER 517

### HOUSE BILL NO. 1411

(Representatives D. Johnson, M. Ruby, Weisz)  
(Senators Cleary, Lee)

AN ACT to create and enact section 54-52.1-04.18 of the North Dakota Century Code, relating to public employees retirement system health benefits coverage of prosthetic devices; to provide a statement of legislative intent; to provide for application; and to declare an emergency.

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

**SECTION 1.** Section 54-52.1-04.18 of the North Dakota Century Code is created and enacted as follows:

**54-52.1-04.18. Uniform group insurance program - Prosthetic devices.**

The board shall provide health insurance benefits coverage under a contract for insurance pursuant to section 54-52.1-04 or under a self-insurance plan pursuant to section 54-52.1-04.2 for prosthetic appliances and limbs. This coverage must include repair or replacement of a prosthetic limb or socket if medically appropriate.

**SECTION 2. LEGISLATIVE INTENT.** It is the intent of the sixty-eighth legislative assembly that any increase in premiums under the public employees retirement system contract or plan for health benefits resulting from this Act be paid from the health insurance reserve fund.

**SECTION 3. APPLICATION.** This Act applies to a public employees retirement system contract or plan for health benefits which goes into effect after June 30, 2023.

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

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 518

### SENATE BILL NO. 2198

(Senators Dever, K. Roers)

AN ACT to amend and reenact sections 54-52.4-02, 54-52.4-04, and 54-52.4-05 of the North Dakota Century Code, relating to state employee family medical leave.

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

**SECTION 1. AMENDMENT.** Section 54-52.4-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **54-52.4-02. Family leave.**

1. An employer shall grant an employee's request for a family leave of absence for any of the following reasons:
  - a. To care for the employee's child by birth, if the leave concludes within twelve months of the child's birth.
  - b. To care for a child placed with the employee, by a child-placing agency licensed under chapter 50-12, for adoption or as a precondition to adoption under section 14-15-12, but not both, or for foster care, if the leave concludes within twelve months of the child's placement.
  - c. To care for the employee's child, spouse, or parent if the child, spouse, or parent has a serious health condition.
  - d. Because of the employee's serious health condition that makes the employee unable to perform the functions of the employee's job.
  - e. Because of the death of the employee's child, if the leave concludes within six months of the child's death.
  - f. To care for the employee's child, regardless of age, spouse, or parent who is a covered service member or veteran with a serious injury or illness under the definition of serious injury or illness for a military service member or veteran as adopted by the United States department of labor.
2. Except as otherwise provided under this section, for any combination of reasons specified in subsection 1, an employee may take family leave in any twelve-month period for not more than twelve workweeks. The twelve weeks of family leave may be taken intermittently for leave under subdivision a or b of subsection 1 if approved by the employer. The twelve weeks of family leave may be taken intermittently for leave under subdivision c or d of subsection 1 if the leave is medically necessary. The twelve weeks of family leave taken under subdivision e of subsection 1 may be taken intermittently if approved by the employer. If an employee normally works a part-time schedule or variable hours, the amount of leave to which an employee is entitled must be determined on a pro rata or proportional basis by comparing the new schedule with the employee's normal schedule.

3. Notwithstanding the twelve-workweek limitation under subsections 2 and 4, leave under subdivision f of subsection 1 is limited to a combined twenty-six workweeks of leave in any twelve-month period and is limited to once per service member or veteran per serious injury or illness.
4. In any case in which a husband and wife entitled to family leave under this chapter are employed by the same employer, the aggregate period of family leave to which both are entitled may be limited by the employer to twelve workweeks during any twelve-month period.
- ~~4.5.~~ An employee reasonably shall consider the needs of the employer in scheduling family leave under this section or in using leave under section 54-52.4-03.
- ~~5.6.~~ The family leave required by this chapter is not required to be granted with pay unless otherwise specified by agreement between the employer and employee, by collective bargaining agreement, or by employer policy.
- ~~6.7.~~ The family leave required by this chapter supplements any leave otherwise available to an employee.

**SECTION 2. AMENDMENT.** Section 54-52.4-04 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.4-04. Notice to employer.**

1. If an employee intends to take family leave for the reasons specified in subdivision a or b of subsection 1 of section 54-52.4-02, the employee, in a reasonable and practicable manner, shall give the employer advance notice of the expected birth or placement.
2. If an employee intends to take family leave for the reasons specified in subdivision c ~~or~~ d, or f of subsection 1 of section 54-52.4-02, the employee shall:
  - a. Make a reasonable effort to schedule the planned care or treatment so the leave does not unduly disrupt the employer's operations, subject to the approval of the health care provider to the child, spouse, parent, or employee; and
  - b. Give the employer advance notice of the planned care or treatment in a reasonable and practicable manner.
3. If an employee intends to take family leave for the reason specified in subdivision e of subsection 1 of section 54-52.4-02, the employee shall make a reasonable effort to schedule the leave so the leave does not unduly disrupt the employer's operations and, as appropriate, give the employer advance notice of the leave in a reasonable and practicable manner.

**SECTION 3. AMENDMENT.** Section 54-52.4-05 of the North Dakota Century Code is amended and reenacted as follows:

**54-52.4-05. Certification for leave to care for child, spouse, parent, or employee's serious health condition.**

1. If an employee requests family leave for the reasons described in subdivision c or d, or f of subsection 1 of section 54-52.4-02 or leave under section 54-52.4-03, the employer may require the employee to provide certification, as described in subsection 2, from the provider of health care to the child, spouse, parent, or employee.
2. An employer may not require certification of more than:
  - a. That the child, spouse, parent, or employee has a serious health condition.
  - b. The date the serious health condition commenced and its probable duration.
  - c. Within the knowledge of the health care provider, the medical facts regarding the serious health condition.

Approved April 28, 2023

Filed April 29, 2023

## CHAPTER 519

### SENATE BILL NO. 2338

(Senators Krebsbach, Burckhard, Piepkorn, Vedaa)  
(Representatives Nelson, Roers Jones)

AN ACT to create and enact a new section to chapter 54-54 of the North Dakota Century Code, relating to the state poet laureate.

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

**SECTION 1.** A new section to chapter 54-54 of the North Dakota Century Code is created and enacted as follows:

##### **Poet laureate - Nominating board - Appointment - Term.**

1. By April first of each odd-numbered year, the nominating board shall recommend three individuals as finalists.
2. The nominating board consists of:
  - a. One member of the house of representatives appointed by the majority leader of the house of representatives;
  - b. One member of the senate appointed by the majority leader of the senate;
  - c. One member of the governor's staff appointed by the governor;
  - d. One member of the North Dakota council on the arts, appointed by the chairman of the North Dakota council on the arts; and
  - e. One representative from the department of commerce appointed by the director of the department of commerce.
3. By May first of each odd-numbered year, each finalist shall submit an application to the nominating board. The application must include:
  - a. A resume;
  - b. Five writing samples, one of which must be a recorded presentation;
  - c. Three letters of recommendation; and
  - d. Proof of North Dakota residency.
4. By June first of each odd-numbered year, the nominating board shall select one individual to serve as the poet laureate for a two-year term beginning July first.
5. The poet laureate shall participate in at least four public events around the state each year. The North Dakota council on the arts shall provide up to five thousand dollars in reimbursement to the poet laureate each year for events

completed. Reimbursement may not exceed one thousand two hundred fifty dollars for each event up to the yearly maximum.

6. The North Dakota council on the arts shall process payments through the council's online grants system. To receive payment, the poet laureate shall register in the council's online grants system and send an electronic mail to the council requesting payment. The electronic mail must include:
  - a. The date and time of the presentation;
  - b. The location of the presentation;
  - c. The number of adults and numbers of youth attending the presentation; and
  - d. If available, a copy of the event program.
7. The poet laureate may not name an individual to serve as an associate poet laureate or as a substitute poet laureate.
8. If a poet laureate is unable to fulfill the two-year term, the nominating committee shall select an individual to serve the remainder of the term.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 520

### SENATE BILL NO. 2073

(State and Local Government Committee)  
(At the request of the Information Technology Department)

AN ACT to amend and reenact section 54-59-05 of the North Dakota Century Code, relating to information technology standards and services.

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

<sup>291</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. (Effective through July 31, 2023)**

The department:

1. Shall provide, supervise, and regulate information technology of all executive branch state entities, excluding the institutions under the control of the state board of higher education and the veterans' home.
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. With the exception of agreements entered related to the statewide interoperable radio network, 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 legislative assembly or the budget section if the legislative assembly is not in session before executing a financing agreement. Any request considered by the budget section must comply with section 54-35-02.9. If the legislative assembly or the budget section does not approve the execution of a financing agreement, the department may not proceed with the proposed financing arrangement. With the exception of financing for the

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<sup>291</sup> Section 54-59-05 was also amended by section 1 of House Bill No. 1327, chapter 521.

statewide interoperable radio network, 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 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 five hundred 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 perform all other duties necessary to carry out this chapter.
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.

14. Shall assure proper measures for security, firewalls, and internet protocol addressing at the state's interface with other facilities.
15. Notwithstanding subsection 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.
16. Shall advise and oversee cybersecurity strategy for all executive branch state agencies, including institutions under the control of the state board of higher education, counties, cities, school districts, or other political subdivisions. For purposes of this subsection, the department shall consult with the attorney general on cybersecurity strategy.
17. Shall advise and consult with the legislative and judicial branches regarding cybersecurity strategy.
18. Notwithstanding chapter 54-40.2, may enter a memorandum of understanding with other state, local, tribal, or territorial governments of the United States for purposes of ensuring the confidentiality, availability, and integrity of state, local, and tribal information systems and data, including consulting, developing cybersecurity strategy, prevention of cybersecurity incidents, and response strategies to cybersecurity incidents. The department may charge an amount equal to the cost of the services rendered by the department to all agencies that receive and expend moneys from other than the general fund.
19. Notwithstanding chapter 54-40.2, may enter a mutual aid agreement with other state, local, tribal, or territorial governments of the United States agreeing to the reciprocal exchange of resources and services for mutual benefit of the parties related to cybersecurity efforts for the purposes of responding to or mitigating active cybersecurity incidents. The department may receive in-kind benefits that reduce cybersecurity risks to information technology or shall charge an amount equal to the cost of the services rendered by the department to all agencies that receive and expend moneys from other than the general fund.

### **Powers and duties of department. (Effective after July 31, 2023)**

The department:

1. Shall provide, supervise, and regulate information technology of all executive branch state entities, excluding the institutions under the control of the state board of higher education and the veterans' home.
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 legislative assembly or the budget section if the legislative assembly is not in session before executing a financing agreement. Any request considered by the budget section must comply with section 54-35-02.9. If the legislative assembly or the budget section does not approve the execution of a financing agreement, the 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 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 five hundred 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 perform all other duties necessary to carry out this chapter.
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.
14. Shall assure proper measures for security, firewalls, and internet protocol addressing at the state's interface with other facilities.
15. Notwithstanding subsection 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.
16. Shall advise and oversee cybersecurity strategy for all executive branch state agencies, including institutions under the control of the state board of higher education, counties, cities, school districts, or other political subdivisions. For purposes of this subsection, the department shall consult with the attorney general on cybersecurity strategy.
17. Shall advise and consult with the legislative and judicial branches regarding cybersecurity strategy.
18. Notwithstanding chapter 54-40.2, may enter a memorandum of understanding with other state, local, tribal, or territorial governments of the United States for purposes of ensuring the confidentiality, availability, and integrity of state, local, and tribal information systems and data, including consulting, developing cybersecurity strategy, prevention of cybersecurity incidents, and response strategies to cybersecurity incidents. The department may charge an amount equal to the cost of the services rendered by the department to all agencies that receive and expend moneys from other than the general fund.
19. Notwithstanding chapter 54-40.2, may enter a mutual aid agreement with other state, local, tribal, or territorial governments of the United States agreeing to the reciprocal exchange of resources and services for mutual benefit of the parties related to cybersecurity efforts for the purposes of responding to or mitigating active cybersecurity incidents. The department may receive in-kind benefits that reduce cybersecurity risks to information technology or shall charge an amount equal to the cost of the services

rendered by the department to all agencies that receive and expend moneys from other than the general fund.

20. May provide information technology and cybersecurity services to any administrative, elementary education, secondary education, and higher education institution under the control of a tribal government of this state. The services provided and the cost of services must be equal to those provided to state agencies. An agreement for services entered under this section is not subject to the provisions of chapter 54-40.2.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 521

### HOUSE BILL NO. 1327

(Representatives Mock, Bosch, Christensen, Kiefert, Kreidt, Nelson)  
(Senators Davison, K. Roers, Wobbema)

AN ACT to amend and reenact sections 54-59-05 and 54-59-22 of the North Dakota Century Code, relating to powers and duties of the information technology department and information technology requirements of the veterans' home.

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

<sup>292</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. (Effective through July 31, 2023)**

The department:

1. Shall provide, supervise, and regulate information technology of all executive branch state entities, excluding the institutions under the control of the state board of higher education ~~and the veterans' home.~~
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. With the exception of agreements entered related to the statewide interoperable radio network, 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 legislative assembly or the budget section if the legislative assembly is not in session before executing a financing agreement. Any request considered by the budget section must comply with section 54-35-02.9. If the legislative assembly or the budget section does not approve the execution of a financing agreement, the department may not proceed with

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<sup>292</sup> Section 54-59-05 was also amended by section 1 of Senate Bill No. 2073, chapter 520.

the proposed financing arrangement. With the exception of financing for the statewide interoperable radio network, 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 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 five hundred 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 perform all other duties necessary to carry out this chapter.
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.

14. Shall assure proper measures for security, firewalls, and internet protocol addressing at the state's interface with other facilities.
15. Notwithstanding subsection 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.
16. Shall advise and oversee cybersecurity strategy for all executive branch state agencies, including institutions under the control of the state board of higher education, counties, cities, school districts, or other political subdivisions. For purposes of this subsection, the department shall consult with the attorney general on cybersecurity strategy.
17. Shall advise and consult with the legislative and judicial branches regarding cybersecurity strategy.
18. Notwithstanding chapter 54-40.2, may enter a memorandum of understanding with other state, local, tribal, or territorial governments of the United States for purposes of ensuring the confidentiality, availability, and integrity of state, local, and tribal information systems and data, including consulting, developing cybersecurity strategy, prevention of cybersecurity incidents, and response strategies to cybersecurity incidents. The department may charge an amount equal to the cost of the services rendered by the department to all agencies that receive and expend moneys from other than the general fund.
19. Notwithstanding chapter 54-40.2, may enter a mutual aid agreement with other state, local, tribal, or territorial governments of the United States agreeing to the reciprocal exchange of resources and services for mutual benefit of the parties related to cybersecurity efforts for the purposes of responding to or mitigating active cybersecurity incidents. The department may receive in-kind benefits that reduce cybersecurity risks to information technology or shall charge an amount equal to the cost of the services rendered by the department to all agencies that receive and expend moneys from other than the general fund.

### **Powers and duties of department. (Effective after July 31, 2023)**

The department:

1. Shall provide, supervise, and regulate information technology of all executive branch state entities, excluding the institutions under the control of the state board of higher education and the veterans' home.
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 legislative assembly or the budget section if the legislative assembly is not in session before executing a financing agreement. Any request considered by the budget section must comply with section 54-35-02.9. If the legislative assembly or the budget section does not approve the execution of a financing agreement, the 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 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 five hundred 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 perform all other duties necessary to carry out this chapter.
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.
14. Shall assure proper measures for security, firewalls, and internet protocol addressing at the state's interface with other facilities.
15. Notwithstanding subsection 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.
16. Shall advise and oversee cybersecurity strategy for all executive branch state agencies, including institutions under the control of the state board of higher education, counties, cities, school districts, or other political subdivisions. For purposes of this subsection, the department shall consult with the attorney general on cybersecurity strategy.
17. Shall advise and consult with the legislative and judicial branches regarding cybersecurity strategy.
18. Notwithstanding chapter 54-40.2, may enter a memorandum of understanding with other state, local, tribal, or territorial governments of the United States for purposes of ensuring the confidentiality, availability, and integrity of state, local, and tribal information systems and data, including consulting, developing cybersecurity strategy, prevention of cybersecurity incidents, and response strategies to cybersecurity incidents. The department may charge an amount equal to the cost of the services rendered by the department to all agencies that receive and expend moneys from other than the general fund.
19. Notwithstanding chapter 54-40.2, may enter a mutual aid agreement with other state, local, tribal, or territorial governments of the United States agreeing to the reciprocal exchange of resources and services for mutual benefit of the parties related to cybersecurity efforts for the purposes of

responding to or mitigating active cybersecurity incidents. The department may receive in-kind benefits that reduce cybersecurity risks to information technology or shall charge an amount equal to the cost of the services rendered by the department to all agencies that receive and expend moneys from other than the general fund.

**SECTION 2. AMENDMENT.** Section 54-59-22 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-22. Required use of electronic mail, file and print server administration, database administration, application server, and hosting services.**

Each state agency and institution, excluding the legislative and judicial branches, the institutions under the control of the state board of higher education, the attorney general, ~~the veterans' home,~~ and any entity exempted by the office of management and budget after advisement by the information technology department, shall obtain electronic mail, file and print server administration, database administration, storage, application server, and hosting services through a delivery system established by the information technology department in conjunction with the office of management and budget. The office of management and budget, after receiving advice from the information technology department, shall establish policies and guidelines for the delivery of services, including the transition from existing systems to functional consolidation, with consideration given to the creation of efficiencies, cost-savings, and improved quality of service.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 522

### SENATE BILL NO. 2142

(Senators Mathern, K. Roers, Sorvaag)  
(Representatives Ista, Meier, Mitskog)

AN ACT to create and enact a new section to chapter 54-60 of the North Dakota Century Code, relating to the creation of an office of legal immigration; to provide an appropriation; and to provide for a report.

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

**SECTION 1.** A new section to chapter 54-60 of the North Dakota Century Code is created and enacted as follows:

##### **Office of legal immigration - Duties.**

There is created an office of legal immigration within the department of commerce. Employees of the office of legal immigration report to the commissioner. The office of legal immigration:

1. Shall develop and implement a statewide strategy to support businesses in recruiting and retaining foreign labor, including immigrants already in the United States and integration of immigrants into the state to promote economic opportunities for immigrant communities.
2. Shall advise and make recommendations to the governor, legislative assembly, and state agencies regarding immigrant integration and foreign labor issues.
3. Shall develop a pilot program to support businesses pursuing or employing legal immigrants and to support communities to develop immigration integration plans and activities.
4. May contract with other state agencies to develop and administer programs or services related to immigration integration and access to basic needs that promote entrance and movement throughout the workforce.
5. May contract with an organization with expertise related to the goals of the office of legal immigration.

**SECTION 2. APPROPRIATION - DEPARTMENT OF COMMERCE - OFFICE OF LEGAL IMMIGRATION - FULL-TIME EQUIVALENT POSITIONS - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$485,000, or so much of the sum as may be necessary, to the department of commerce for the purpose of providing salaries and benefits for office of legal immigration staff, for the biennium beginning July 1, 2023, and ending June 30, 2025. The department of commerce is authorized two full-time equivalent positions to administer the office of legal immigration. The department of commerce shall report to the sixty-ninth legislative assembly regarding the number of immigrants and

employers assisted through the office of legal immigration during the 2023-25 biennium.

**SECTION 3. DEPARTMENT OF COMMERCE STUDY - IMMIGRATION - REPORT TO SIXTY-NINTH LEGISLATIVE ASSEMBLY.** During the 2023-24 interim, the department of commerce shall conduct a study to determine immigration opportunities in the state, goals of the office of legal immigration, performance indicators to measure progress and success of immigration goals, and a structure for a pilot program to support businesses and communities pursuing legal immigration, and to develop a fee-based system for services to be implemented in the 2025-27 biennium. The study must include input from employers in the state. The department of commerce shall report its findings and recommendations to the sixty-ninth legislative assembly.

Approved April 21, 2023

Filed April 24, 2023

## CHAPTER 523

### SENATE BILL NO. 2165

(Senators Patten, Kannianen, Kessel)  
(Representatives Bosch, Novak, Porter)

AN ACT to amend and reenact section 54-63.1-03 of the North Dakota Century Code, relating to membership of the clean sustainable energy authority.

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

**SECTION 1. AMENDMENT.** Section 54-63.1-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-63.1-03. Clean sustainable energy authority - Membership - Meetings.**

1. The clean sustainable energy authority consists of ~~sixteenseventeen~~ members, including ~~eightnine~~ voting members and eight nonvoting technical advisors.
2. The ~~eightnine~~ voting members consist of:
  - a. ~~One member~~Two members, one from the senate and one from the house of representatives, appointed by the legislative management to serve as ~~chairman~~co-chairmen;
  - b. Two members appointed by the lignite research council;
  - c. Two members appointed by the oil and gas research council;
  - d. Two members appointed by the renewable energy council; and
  - e. One member appointed by the western Dakota energy association.
3. The eight nonvoting technical advisors consist of:
  - a. One member appointed by the North Dakota outdoor heritage fund advisory board;
  - b. The commissioner of commerce or the commissioner's designee;
  - c. The director of the department of environmental quality or the director's designee;
  - d. The director of mineral resources or the director's designee;
  - e. The director of the North Dakota pipeline authority or the director's designee;
  - f. The director of the North Dakota transmission authority or the director's designee;

- g. The director of the state energy research center or the director's designee; and
- h. The president of the Bank of North Dakota or the president's designee.
4. The term of office for ~~the chairman~~each co-chairman is two years. The term of office for the other voting members is four years, and the other voting members may not serve more than two consecutive terms. The terms of office for the voting members commence on July first. The initial terms for the voting members of the authority must be staggered following a method determined by the authority.
5. The authority shall meet at least semiannually. The ~~chairman~~co-chairmen shall call a meeting upon written request from three voting members of the authority. Five voting members is a quorum at any meeting.
6. The authority may not forward a recommendation to the commission unless the recommendation fulfills the purposes of this chapter and is approved by a majority of the voting members of the authority.

Approved March 22, 2023

Filed March 23, 2023

## CHAPTER 524

### HOUSE BILL NO. 1485

(Representatives Kasper, Headland, Heinert, Koppelman, Lefor, Louser, Monson,  
Rohr, Steiner)  
(Senators Meyer, Paulson, Vedaa)

AN ACT to create and enact a new section to chapter 54-66 of the North Dakota Century Code, relating to legislative assembly conflict of interest rules; 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 54-66 of the North Dakota Century Code is created and enacted as follows:

##### Conflicts of interest - Legislative assembly.

1. Each legislative assembly shall adopt conflict of interest rules. The rules must:
  - a. Require the disclosure by a member of a potential conflict of interest relating to any bill in which the member may have a direct, unique, substantial, or individual interest.
  - b. Ensure a mechanism is in place to record each disclosure and make it readily available to the public.
2. If the legislative assembly adopts rules under subsection 1 which are at least as restrictive as the conflict of interest rules adopted by the ethics commission, the disclosure process portion of the conflict of interest rules adopted by the ethics commission may not apply to members of the legislative assembly.

**SECTION 2. APPLICATION.** House Rule 321, Senate Rule 321, and associated rules relating to conflicts of interest of legislators, as enacted by the sixty-eighth legislative assembly, are at least as restrictive as the conflict of interest rules adopted by the ethics commission and control conflict of interest disclosure for members of the legislative assembly.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 6, 2023

Filed April 10, 2023

## CHAPTER 525

### SENATE BILL NO. 2048

(State and Local Government Committee)  
(At the request of the Ethics Commission)

AN ACT to amend and reenact sections 54-66-01 and 54-66-06 of the North Dakota Century Code, relating to the definitions and notice to an accused individual.

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

**SECTION 1. AMENDMENT.** Section 54-66-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **54-66-01. Definitions.**

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

1. "Accused individual" means a lobbyist, public official, candidate for public office, political committee, or contributor who is alleged to have violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding transparency, corruption, elections, or lobbying.
2. "Complainant" means ~~a North Dakota resident~~ an individual who, in writing or verbally, submits a complaint to the commission and is:
  - a. A North Dakota resident;
  - b. Subject to licensing by a state agency or other public official subject to the jurisdiction of the ethics commission; or
  - c. A party to a quasi-judicial proceeding before a state agency or other public official subject to the jurisdiction of the ethics commission.
3. "Complaint" means a verbal or written allegation to the commission that a lobbyist, public official, candidate for public office, political committee, or contributor has violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding transparency, corruption, elections, or lobbying.
4. "Ethics commission" or "commission" means the North Dakota ethics commission established by article XIV of the Constitution of North Dakota.
5. "Gift" means any item, service, or thing of value not given in exchange for fair market consideration including travel and recreation, except:
  - a. Purely informational material;
  - b. A campaign contribution; and
  - c. An item, service, or thing of value given under conditions that do not raise ethical concerns, as set forth in rules adopted by the ethics commission, to

advance opportunities for state residents to meet with public officials in educational and social settings in the state.

6. "Influence state government action" means promoting or opposing the adoption of a rule by an administrative agency or the commission under chapter 28-32.
7. "Lobby" means an activity listed in subsection 1 of section 54-05.1-02.
8. "Lobbyist" means an individual required to register under section 54-05.1-03.
9. "Public official" means an elected or appointed official of the state's executive or legislative branch, members of the commission, members of the governor's cabinet, and employees of the legislative branch.
10. "Receives the complaint" means one or more members of the commission learn of the complaint.
11. "Ultimate and true source" means the person that knowingly contributed over two hundred dollars solely to lobby or influence state government action.

**SECTION 2. AMENDMENT.** Section 54-66-06 of the North Dakota Century Code is amended and reenacted as follows:

**54-66-06. Informing the accused individual - Written response permitted.**

The

1. Within thirty calendar days, the commission shall inform an accused individual of the complaint and include, Subject to the confidentiality requirements set forth in section 54-66-05, the accused individual will be provided with the written complaint or written summary of the oral complaint, witness statements, and other documentary evidence considered as soon as reasonably possible but no later than twenty calendar days after the commission receives included with the complaint. The accused individual may respond provide a written response to the complaint in writing within twentythirty calendar days of receipt of, or after the commission requests a written response to the complaint or summary of the complaint, a period as set by the commission. This subsection does not preclude the accused individual from providing a written response to the complaint before receiving a request for written response from the commission.
2. If the commission has summarily dismissed the complaint under subsection 2 of section 54-66-05, before notifying the accused individual as required by this section, the notification to the accused individual must include notice of the summary dismissal.

Approved April 21, 2023

Filed April 24, 2023

# STATE HISTORICAL SOCIETY AND STATE PARKS

## CHAPTER 526

### SENATE BILL NO. 2108

(State and Local Government Committee)  
(At the request of the Parks and Recreation Department)

AN ACT to amend and reenact section 55-08-05, subsections 3 and 4 of section 55-08-06, and subsection 1 of section 55-08-07 of the North Dakota Century Code, relating to motor vehicle permit fees; and to repeal section 55-08-14.1 of the North Dakota Century Code, relating to leadership and facility grants.

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

**SECTION 1. AMENDMENT.** Section 55-08-05 of the North Dakota Century Code is amended and reenacted as follows:

##### **55-08-05. Charges for services.**

The director may provide special services within state parks, state campgrounds, state recreation areas, and reserves; provide special technical assistance services; and make rules for the use of those services. The director shall establish and cause to be collected charges, fees, and rentals for the use of all special services, and shall revise the same, when necessary, in the manner that the revenue derived will be sufficient to pay the cost of providing each service and to pay the principal of and interest on all bonds issued for projects furnishing the facilities for the services, and to maintain a reserve for the security of the bonds. ~~The director may waive the collection of charges, fees, and rentals for the use of special services by health care-related charitable organizations conducting group camp activities without charge to participants. However, the director shall waive the collection of charges, fees, and rentals for the use of all special services by any care-related charitable organization sponsoring or conducting summer group camp activities without charge for fourteen days for children from age eight through age fourteen who have diabetes. Nothing in this section requires the director to provide camp services if the camp facilities are otherwise closed due to adverse administrative or fiscal impacts upon the department. Specifically, the director may:~~

1. Provide special parking space for automobiles or other motor-driven vehicles in any state park or state recreation area.
2. Provide special parking spurs and campgrounds for automobiles and sites for tent camping and special auto trailer coach parking spaces for the use of the individual charged for the space according to the daily rate which must be determined and fixed by the director consistent with the type of facility provided for the accommodation of visitors in any particular park and with similar facilities offered for tourist camping in the area.

3. ~~Charge a fee for entrance to any pageant grounds created in any state park, state recreation area, or reserve for the purpose of having historical or other pageants conducted by the agent of any authorized agency.~~
4. Provide water, sewer, and electric service to trailer or tent campsites and buildings and structures included in projects authorized by the legislative assembly.
- 5-4. Provide facilities and allow for the sale to the public of food, nonintoxicating beverages, beer and wine as provided in subsection 6, 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 use of food vendors or 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.
- 6-5. Allow the sale of beer and wine by operating concessionaires on property under the management of the director, if the concessionaire holds the appropriate local and state retail licenses or an event permit required or authorized by chapter 5-02.
- 7-6. ~~Charge and collect motor vehicle permit fees in the amounts prescribed by the legislative assembly, which fees are and must be imposed for the sole purposes of paying capital costs of projects required to provide the special services herein described and referred to, and of meeting the principal and interest and reserve requirements of bonds issued to finance such projects as established under section 55-08-06.~~
8. Charge a fee for providing special technical assistance to groups requesting information from the natural heritage inventory database.
- 9-7. Allow the sale of advertising in parks and recreation publications. The director may make rules regarding advertisement contracts and charges, space availability, and content.

<sup>293</sup> **SECTION 2. AMENDMENT.** Subsection 3 of section 55-08-06 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~A fee of~~ permit fee must be established by the director each year before being placed on sale as prescribed by subsection 1:
  - a. ~~Thirty five dollars must be charged for the first annual permit issued to a permitholder under subsection 2, except:~~
    - (4) ~~Permits of appropriate special design may be sold individually at a maximum of seven dollars per permit covering the use of state parks, state recreational areas, or reserves under such conditions as the director may prescribe~~ fee established by the director and for a designated period of not more than three days; and

<sup>293</sup> Section 55-08-06 was also amended by section 3 of Senate Bill No. 2108, chapter 526.

(2)b. The director may authorize a discount on the sale of annual permits to any resident of North Dakota who is sixty-five years of age or older and who applies for a discount.

b.c. ~~Twenty dollars~~Unless a discount, lower fee, or package fee has been applied, a discount of twenty-five percent must be charged for a second annual permit issued to a permit holder under subsection 2, which only may be used by members of the permit holder's household, except the director may authorize a discount on the sale of a second or subsequent annual permit to any resident of North Dakota who is sixty-five years of age or older and who applies for a discount.

<sup>294</sup> **SECTION 3. AMENDMENT.** Subsection 4 of section 55-08-06 of the North Dakota Century Code is amended and reenacted as follows:

4. The fees collected must be deposited in the state park operating fund in the state treasury, unless authorized by the director as follows:
  - a. The director may allow other agencies or organizations that have leased state parks, state recreational areas, reserves, or facilities to retain entrance and special permit fees collected by the lessee.
  - b. The director may exempt all or any part of any state park, state recreational area, or reserve from the requirement of the motor vehicle permit and fee, for any activity or period, when in the director's judgment it is desirable to do so; ~~provided, however, that no further exceptions may be made after state park revenue bonds are issued and while the bonds are outstanding.~~

**SECTION 4. AMENDMENT.** Subsection 1 of section 55-08-07 of the North Dakota Century Code is amended and reenacted as follows:

1. To pay the current cost of furnishing each special service provided in accordance with this chapter. For this purpose the charges, fees, and rentals for each service must be credited to a special operating account, from which must be paid only the current, reasonable, and necessary cost of operating that service, determined in accordance with accepted accounting practice, including the purchase price of merchandise and utilities sold and the compensation of employees necessarily attributable to the furnishing of that service. The director may incur no operating cost for any building, structure, or facility leased, and the leases must provide for the payment of the costs by the lessee and for the payment of a net rental in addition to the costs. ~~No lease rentals and no motor vehicle permit fees may be credited to operating accounts.~~

**SECTION 5. REPEAL.** Section 55-08-14.1 of the North Dakota Century Code is repealed.

Approved March 22, 2023

Filed March 23, 2023

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<sup>294</sup> Section 55-08-06 was also amended by section 2 of Senate Bill No. 2108, chapter 526.



# TAXATION

## CHAPTER 527

### HOUSE BILL NO. 1158

(Representatives Headland, Bosch, Dockter, Grueneich, Hagert, Heinert)  
(Senators Axtman, Conley, Kannianen, Meyer, K. Roers, Wanzek)

AN ACT to create and enact two new sections to chapter 57-02 of the North Dakota Century Code, relating to a property tax credit for property used as a primary residence; to amend and reenact subsection 1 of section 57-02-08.1 and subsection 1 of section 57-38-30.3 of the North Dakota Century Code, relating to the homestead tax credit and income tax rates for individuals, estates, and trusts; to provide for a legislative management study; to provide for a legislative management report; 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.** Subsection 1 of section 57-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~twenty-two~~forty thousand dollars, a reduction of one hundred percent of the taxable valuation of the person's homestead up to a maximum reduction of ~~five~~nine thousand ~~six hundred twenty-five~~ dollars of taxable valuation.
  - (2) If the person's income is in excess of ~~twenty-two~~forty thousand dollars and not in excess of ~~twenty-six~~seventy thousand dollars, a reduction of ~~eighty~~fifty percent of the taxable valuation of the person's homestead up to a maximum reduction of four thousand five hundred dollars of taxable valuation.

- (3) ~~If the person's income is in excess of twenty-six thousand dollars and not in excess of thirty thousand dollars, a reduction of sixty percent of the taxable valuation of the person's homestead up to a maximum reduction of three thousand three hundred seventy-five dollars of taxable valuation.~~
- (4) ~~If the person's income is in excess of thirty thousand dollars and not in excess of thirty-four thousand dollars, a reduction of forty percent of the taxable valuation of the person's homestead up to a maximum reduction of two thousand two hundred fifty dollars of taxable valuation.~~
- (5) ~~If the person's income is in excess of thirty-four thousand dollars and not in excess of thirty-eight thousand dollars, a reduction of twenty percent of the taxable valuation of the person's homestead up to a maximum reduction of one thousand one hundred twenty-five dollars of taxable valuation.~~
- (6) ~~If the person's income is in excess of thirty-eight thousand dollars and not in excess of forty-two thousand dollars, a reduction of ten percent of the taxable valuation of the person's homestead up to a maximum reduction of five hundred sixty-three 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 co-owners 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. Any income information contained in the statement of facts is a confidential record.
- 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 exceeds five hundred thousand dollars, including the value of any assets divested within the last three years.~~
- 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-h. ~~An exemption under this subsection terminates at the end of the taxable year of the death of the applicant.~~

**SECTION 2.** A new section to chapter 57-02 of the North Dakota Century Code is created and enacted as follows:

**Primary residence credit - Qualification - Application.**

1. An individual is entitled to a credit of five hundred dollars against the property tax due on the individual's primary residence. The credit may not exceed the amount of property tax due. The credit must be applied to reduce the property

tax owed on the individual's primary residence after other exemptions or credits under this chapter have been applied.

2. For purposes of this section, "primary residence" means a dwelling in this state owned and occupied by an individual as that individual's primary place of residence and includes residences taxed under chapter 57-55. An individual may not have more than one primary residence.
3. An individual who does not reside in the primary residence in this state is eligible for the credit under this section if the individual's absence is due to confinement in a nursing home, hospital, or other care facility, for as long as the portion of the primary residence previously occupied by the individual is not rented to another individual.
4. Only one credit under this section may be applied against the property taxes levied against any primary residence.
5. An individual whose primary residence is a farm structure exempt from taxation under subsection 15 of section 57-02-08 is not eligible for a credit under this section.
6. The credit may not reduce the liability for special assessments levied upon any property.
7. To apply for a credit under this section, an applicant shall sign and file with the tax commissioner, by April first of each year, an application containing a verified statement of facts establishing the applicant's eligibility as of the date of the claim on a form and in the manner prescribed by the tax commissioner.
8. The tax commissioner, in consultation with the county auditors, shall prescribe, design, and make available all forms necessary to effectuate this section. The tax commissioner shall make these forms available upon request.

**SECTION 3.** A new section to chapter 57-02 of the North Dakota Century Code is created and enacted as follows:

**Primary residence credit - Certification - Distribution.**

1. By June first of each year, the tax commissioner shall:
  - a. Review the applications received under section 2 of this Act and determine which applicants qualify for the credit allowed under section 2 of this Act; and
  - b. Provide to each county auditor:
    - (1) A copy of each approved application under subdivision a which identifies a primary residence located in the county; and
    - (2) The sum of the credits allowed under section 2 of this Act in the county for the current taxable year.
2. The county auditor shall apply the credit under section 2 of this Act to each primary residence identified by the tax commissioner as a qualifying primary residence on the corresponding property tax statement.

- 3. By January first of each year, the county auditor shall certify to the tax commissioner the sum of the credits approved by the tax commissioner under subsection 1 which were applied toward property taxes owed on primary residences in the county for the preceding year.
- 4. By June first of each year after 2024, the tax commissioner shall review a sampling of information provided by the county auditor to verify the accuracy of the application of the credit and certify to the state treasurer for payment to each county the aggregate dollar amount of credits allowed under section 2 of this Act in each county for the preceding year.
- 5. Within fourteen days of receiving the payment from the state treasurer, but no later than June thirtieth of each year after 2024, the county treasurer shall apportion and distribute the payment to the county and to the taxing districts of the county on the same basis as property taxes for the preceding year were apportioned and distributed.
- 6. Supplemental certifications by the county auditor and the tax commissioner and supplemental payments by the state treasurer may be made after the dates prescribed in this section to make corrections necessary because of errors.
- 7. The county auditors shall provide information requested by the tax commissioner to effectuate this section.
- 8. The tax commissioner shall prescribe, design, and make available all forms necessary to effectuate this section.

<sup>295</sup> **SECTION 4. 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:

Over	Not over	The tax is equal to	Of amount over
\$0	\$37,450	4.10%	\$0

<sup>295</sup> Section 57-38-30.3 was also amended by section 3 of House Bill No. 1168, chapter 539, and section 3 of House Bill No. 1176, chapter 542, and section 2 of House Bill No. 1383, chapter 541, section 1 of Senate Bill No. 2147, chapter 545, and section 1 of Senate Bill No. 2293, chapter 544.

\$37,450	\$90,750	\$411.95 + 2.04%	\$37,450
\$90,750	\$189,300	\$1,499.27 + 2.27%	\$90,750
\$189,300	\$411,500	\$3,736.36 + 2.64%	\$189,300
\$411,500		\$9,602.44 + 2.90%	\$411,500
\$0	\$44,725	\$0.00 + 0.00%	\$0
\$44,725	\$225,975	\$0.00 + 1.95%	\$44,725
\$225,975		\$3,534.38 + 2.50%	\$225,975

## b. Married filing jointly and surviving spouse.

If North Dakota taxable income is:

Over	Not over	The tax is equal to	Of amount over
\$0	\$62,600	1.10%	\$0
\$62,600	\$151,200	\$688.60 + 2.04%	\$62,600
\$151,200	\$230,450	\$2,496.04 + 2.27%	\$151,200
\$230,450	\$411,500	\$4,295.02 + 2.64%	\$230,450
\$411,500		\$9,074.74 + 2.90%	\$411,500
\$0	\$74,750	\$0.00 + 0.00%	\$0
\$74,750	\$275,100	\$0.00 + 1.95%	\$74,750
\$275,100		\$3,906.83 + 2.50%	\$275,100

## c. Married filing separately.

If North Dakota taxable income is:

Over	Not over	The tax is equal to	Of amount over
\$0	\$31,300	1.10%	\$0
\$31,300	\$75,600	\$344.30 + 2.04%	\$31,300
\$75,600	\$115,225	\$1,248.02 + 2.27%	\$75,600
\$115,225	\$205,750	\$2,147.51 + 2.64%	\$115,225
\$205,750		\$4,537.37 + 2.90%	\$205,750
\$0	\$37,375	\$0.00 + 0.00%	\$0
\$37,375	\$137,550	\$0.00 + 1.95%	\$37,375
\$137,550		\$1,953.41 + 2.50%	\$137,550

## d. Head of household.

If North Dakota taxable income is:

Over	Not over	The tax is equal to	Of amount over
\$0	\$50,200	1.10%	\$0
\$50,200	\$129,600	\$552.20 + 2.04%	\$50,200
\$129,600	\$209,850	\$2,171.96 + 2.27%	\$129,600
\$209,850	\$411,500	\$3,993.64 + 2.64%	\$209,850
\$411,500		\$9,317.20 + 2.90%	\$411,500
\$0	\$59,950	\$0.00 + 0.00%	\$0
\$59,950	\$250,550	\$0.00 + 1.95%	\$59,950
\$250,550		\$3,716.70 + 2.50%	\$250,550

## e. Estates and trusts.

If North Dakota taxable income is:

Over	Not over	The tax is equal to	Of amount over
\$0	\$2,500	1.10%	\$0
\$2,500	\$5,900	\$27.50 + 2.04%	\$2,500
\$5,900	\$9,050	\$96.86 + 2.27%	\$5,900
\$9,050	\$12,300	\$168.37 + 2.64%	\$9,050
\$12,300		\$254.17 + 2.90%	\$12,300
\$0	\$3,000	\$0.00 + 0.00%	\$0
\$3,000	\$10,750	\$0.00 + 1.95%	\$3,000
\$10,750		\$151.13 + 2.50%	\$10,750

- 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. 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.

#### **SECTION 5. LEGISLATIVE TAX RELIEF ADVISORY COMMITTEE - TAX RELIEF STUDY - REPORT TO LEGISLATIVE MANAGEMENT.**

1. During the 2023-24 interim, the legislative management shall appoint a legislative tax relief advisory committee.
2. The committee must consist of three members of the finance and taxation standing committee of the house of representatives and three members of the finance and taxation standing committee of the senate, appointed by the respective majority leaders of the house of representatives and senate. The legislative management shall designate the chairman of the committee. The committee shall operate according to the statutes and procedures governing the operation of other legislative management interim committees.
3. The committee shall study tax relief, including income and property tax relief.
  - a. Based on information provided by the tax department, the study must include consideration of:
    - (1) Historical income and property tax relief provided by the legislative assembly, including the estimated and actual fiscal impact of the tax relief;

- (2) An analysis of the tax relief provided by the sixty-eighth legislative assembly through individual income tax rate changes, a primary residence credit, and an expansion of the homestead credit, including the estimated fiscal impact for each method of tax relief and the effect of the income tax rate changes on passthrough income related to income reported on K-1 forms and royalty income reported on 1099-MISC forms;
  - (3) Options to implement a flat individual income tax rate, including the estimated fiscal impact of the options;
  - (4) Options to adjust the individual income tax structure, including the estimated fiscal impact of the options; and
  - (5) An update on the progress of implementing the primary residence credit, including the status of information technology changes and the amount spent on advertising the credit.
- b. The committee may consider input from local taxing districts regarding the administration of the primary residence credit and the homestead credit.
  - c. The committee shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 6. APPROPRIATION - TAX COMMISSIONER - PROPERTY TAX RELIEF - ONE-TIME FUNDING.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$158,225,000, or so much of the sum as may be necessary, to the tax commissioner for property tax relief programs during the biennium beginning July 1, 2023, and ending June 30, 2025, as follows:

1. \$103,225,000 for paying the state reimbursement under the primary residence credit;
2. \$53,500,000 for paying the state reimbursement under the homestead credit; and
3. \$1,500,000, which is considered a one-time funding item, for operating expenses related to information technology and advertising costs for the primary residence credit.

**SECTION 7. EFFECTIVE DATE - EXPIRATION DATE.** Section 2 of this Act is effective for the first two taxable years beginning after December 31, 2023, and after that date is ineffective.

**SECTION 8. EFFECTIVE DATE.** Sections 1 and 4 of this Act are effective for taxable years beginning after December 31, 2022. Section 3 of this Act becomes effective on April 1, 2024.

**SECTION 9. EXPIRATION DATE.** Section 3 of this Act is effective through June 30, 2026, and after that date is ineffective.

Approved April 27, 2023

Filed April 27, 2023

## CHAPTER 528

### HOUSE BILL NO. 1438

(Representatives Bellew, Nelson, Sanford, Strinden, Vigesaa)  
(Senator Estenson)

AN ACT to amend and reenact subsection 8 of section 57-02-08 of the North Dakota Century Code, relating to a property tax exemption for buildings and land belonging to institutions of public charity; and to provide an effective date.

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

<sup>296</sup> **SECTION 1. AMENDMENT.** Subsection 8 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

8. ~~All buildings~~Buildings and land belonging to institutions of public charity, including public hospitals and nursing homes licensed pursuant to section 23-16-01 under the control of religious or charitable institutions, as provided in this subsection. The exemption under this subsection includes:
  - a. ~~Buildings~~ used wholly or in part for public charity, together with the land actually occupied by ~~such~~the institutions not leased or otherwise used with a view to profit. ~~The exemption provided by this subsection includes any~~
  - b. ~~Up to fifty acres of undeveloped land owned by a public hospital or nursing home licensed pursuant to section 23-16-01 under the control of a religious or charitable institution for the purpose of a future building belonging to the public hospital or nursing home. The exemption under this subdivision expires ten years after the taxable year in which the property was acquired by the public hospital or nursing home if construction improvements to accommodate a building belonging to the public hospital or nursing home have not commenced. For purposes of this subdivision, "undeveloped land" includes land undergoing construction or containing improvements to accommodate a building belonging to a public hospital or nursing home licensed pursuant to section 23-16-01 under the control of a religious or charitable institution before the building is completed and suitable for use.~~
  - c. ~~A~~ dormitory, dwelling, or residential-type structure, together with necessary land on which such structure is located, owned by a religious or charitable organization recognized as tax exempt under section 501(c)(3) of the United States Internal Revenue Code which is occupied by members of said organization who are subject to a religious vow of poverty and devote and donate substantially all of their time to the religious or charitable activities of the owner.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2022.

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<sup>296</sup> Section 57-02-08 was also amended by section 1 of House Bill No. 1439, chapter 529.

Approved April 26, 2023

Filed April 26, 2023

## CHAPTER 529

### HOUSE BILL NO. 1439

(Representatives Bellew, Fisher, Karls, Koppelman, Toman)  
(Senators Clemens, Kannianen)

AN ACT to amend and reenact subsection 9 of section 57-02-08 of the North Dakota Century Code, relating to a property tax exemption for property of churches; to provide for application; and to provide a retroactive effective date.

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

<sup>297</sup> **SECTION 1. AMENDMENT.** Subsection 9 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

9. a. The land and any buildings on a parcel on which a church building is located, and which is owned by a religious corporation or organization and used predominantly for the religious purposes of the organization, must be deemed to be property used exclusively for religious purposes, and exempt from taxation. The land and any buildings on a parcel contiguous to the parcel on which a church building is located, which is owned by a religious corporation or organization, is exempt from taxation if any building located on the parcel is used predominantly for religious purposes.
- b. If the parsonage and residence of the bishop, priest, rector, minister, or other clergy is located on property owned by the religious corporation or organization, which is not adjacent to the church, that residence, with usual outbuildings and land on which it is located, up to two acres [.81 hectare], must be deemed to be property used exclusively for religious purposes and is exempt from taxation.
- c. Up to twenty acres [8.09 hectares] of undeveloped land owned by a religious corporation or organization for the purpose of a future church building or buildings or parsonage and residence as provided in subdivision b is exempt from taxation. This exemption expires ten years after the taxable year in which the property was acquired by the religious corporation or organization if construction improvements to accommodate a church building or parsonage and residence have not commenced. For purposes of this subdivision, "undeveloped land" includes land undergoing construction or containing improvements to accommodate a future church building or parsonage and residence as provided in subdivision b before the building or parsonage and residence is completed and suitable for use.
- d. The exemption for a building used for the religious purposes of the owner continues to be in effect if the building in whole, or in part, is rented to another otherwise tax-exempt corporation or organization, provided no profit is realized from the rent.

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<sup>297</sup> Section 57-02-08 was also amended by section 1 of House Bill No. 1438, chapter 528.

**SECTION 2. RETROACTIVE EFFECTIVE DATE - APPLICATION.** This Act is retroactively effective and applies for taxable years beginning after December 31, 2020. The limitation on time for filing an abatement claim under section 57-23-04 does not apply to refunds of taxes paid or cancellation of taxes levied for taxable year 2021 or 2022 on property exempt from taxation under this Act. The board of county commissioners shall direct refund of taxes paid or cancellation of taxes levied on property exempt from taxation under this Act.

Approved April 21, 2023

Filed April 24, 2023

## CHAPTER 530

### HOUSE BILL NO. 1057

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

AN ACT to amend and reenact subsection 6 of section 11-18-02.2, section 57-02-51, subsection 14 of section 57-36-01, and sections 57-39.2-17 and 57-51-02.2 of the North Dakota Century Code, relating to statements of full consideration, notice of township and city equalization meetings, the definition of snuff, service of notice for sales and use tax purposes, and notice of the gas base rate adjustment and gas production tax rate; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 6 of section 11-18-02.2 of the North Dakota Century Code is amended and reenacted as follows:

6. This section 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 that resulted as a settlement of an estate.
  - e. All forced sales, mortgage foreclosures, and tax sales.
  - f. All sales to or from religious, charitable, or nonprofit organizations.
  - g. All sales when there is an indicated change of use by the new owners.
  - h. All transfer of ownership of property for which is given a quitclaim deed.
  - i. Sales of property not assessable by law.
  - j. Agricultural lands of less than eighty acres [32.37 hectares].
  - k. ~~A transfer that is pursuant to a judgment.~~

**SECTION 2. AMENDMENT.** Section 57-02-51 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-02-51. Notice of township and city equalization meetings to be published - Date of equalization meeting.**

Each year the county auditor shall publish in the official county newspaper for two successive weeks, a notice that proceedings for the equalization of assessments will

be held by the several local equalization boards. The first publication of the notice may not be earlier ~~more~~ than ~~March first~~ forty-five days before the date of the equalization proceedings and the second publication may not be later than ~~March twentieth~~ less than fourteen days before the equalization proceedings. The notice must contain a statement that the proceedings will be held at the regular meeting place of the governing board or other place designated by that board of the township or city, as the case may be. The notice must also contain a statement that each taxpayer has the right to appear before the appropriate board of review or equalization and petition for correction of the taxpayer's assessment. The equalization proceedings in an organized township and a city must be held within the first fifteen days of April and the equalization proceedings in an organized township must be held in the month of April.

<sup>298</sup> **SECTION 3. AMENDMENT.** Subsection 14 of section 57-36-01 of the North Dakota Century Code is amended and reenacted as follows:

14. "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be placed in the mouth or nose.

**SECTION 4. AMENDMENT.** Section 57-39.2-17 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.2-17. Service of notice.**

Any notice, ~~except notice of appeals,~~ authorized or required under the provisions of this chapter may be given by mailing the ~~same~~ notice to the person for whom it is intended by registered or certified ~~first-class~~ mail with proof of mailing addressed to ~~such~~ the person at the address given in the last return filed by that person pursuant ~~to~~ under the provisions of this chapter, or if no return has been filed, then ~~such~~ by mailing the notice to the person's last known address as may be obtainable with proof of mailing. ~~The mailing~~ Mailing of such ~~the notice in the manner prescribed by this section is presumptive evidence of the receipt of the same~~ the notice was received by the person to whom the notice is addressed. Any period of time which is determined according to the provisions of this chapter by giving of notice commences to run from ~~the date of registration and posting of such notice.~~

**SECTION 5. AMENDMENT.** Section 57-51-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-51-02.2. Gross production tax - Gas.**

A gross production tax is levied upon all gas produced within North Dakota except gas that is exempt from taxation. The tax levied must attach to the whole production, including the royalty interest. The tax on gas must be calculated by taking the taxable production in mcf times the gas tax rate.

1. The gas tax rate is four cents times the gas base rate adjustment for each fiscal year as calculated under subsection 2.
2. a. The tax department shall annually determine the gas base rate adjustment and the resulting gas tax rate for each fiscal year beginning on July first.
  - b. The gas base rate adjustment for the fiscal year is a fraction, the numerator of which is the annual average of the gas fuels producer price

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<sup>298</sup> Section 57-36-01 was also amended by section 1 of House Bill No. 1412, chapter 537.

- index, commodity code 05-3, as calculated and published by the United States department of labor, bureau of labor statistics, for the previous calendar year, and the denominator of which is seventy-five and seven-tenths.
- c. The tax department shall provide the gas base rate adjustment and the gas tax rate for the fiscal year, as determined under this subsection, to affected producers ~~by written notice mailed on or before June first~~ by posting the notice on the tax department's website.
  - d. If the index used to determine the gas base rate adjustment is substantially revised, or if the base year for the index is changed, the department by administrative rule shall make appropriate adjustment to the method used to determine the gas base rate adjustment to ensure a result which is reasonably consistent with the result which would have been obtained had the index not been revised or the base year changed.
  - e. If the gas fuels producer price index is discontinued, a comparable index must be adopted by the department by an administrative rule.

**SECTION 6. EFFECTIVE DATE.** Sections 4 and 5 of this Act are effective for notices issued after June 30, 2023.

Approved April 12, 2023

Filed April 13, 2023

## CHAPTER 531

### HOUSE BILL NO. 1170

(Representatives Headland, Hagert, Mitskog, Nathe, Nelson, Porter, Stemen,  
Vigesaa)  
(Senators Kannianen, Patten, Sorvaag, Wanzek)

AN ACT to create and enact a new section to chapter 57-06 of the North Dakota Century Code, relating to a property tax exemption for certain natural gas pipeline property; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 57-06 of the North Dakota Century Code is created and enacted as follows:

**Natural gas pipeline infrastructure to underserved communities - Exemption.**

All property, excluding the land on which it is situated, which is part of a natural gas transmission or distribution pipeline system constructed in this state is exempt from taxation for a period of fifteen years following the taxable year in which the pipeline becomes operational. The exemption under this section applies if:

1. Construction of the pipeline commences after January 1, 2023.
2. The pipeline provides service to a city or township located within the state in which the majority of households or businesses did not have access to natural gas service as of January 1, 2023.
3. The pipeline is located within this state.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2022.

Approved April 20, 2023

Filed April 21, 2023

## CHAPTER 532

### HOUSE BILL NO. 1212

(Representatives Schreiber-Beck, McLeod, Mitskog, O'Brien, Pyle)  
(Senators Hogan, Lee, K. Roers)

AN ACT to amend and reenact subsection 1 of section 15-10-18.2, subdivision j of subsection 2 of section 39-04-18, subsection 1 of section 57-02-08.8, and subsection 1 of section 57-40.3-04 of the North Dakota Century Code, relating to benefits for surviving spouses of disabled veterans; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 15-10-18.2 of the North Dakota Century Code is amended and reenacted as follows:

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, has a one hundred percent service-connected disability as determined by the department of veterans' affairs, has an extra-schedular rating to include individual unemployability that brings the veteran's total disability rating to one hundred percent as determined by the department of veterans' affairs, died from service-connected disabilities, was a prisoner of war, or was declared missing in action;
  - b. A child, stepchild, 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, has a one hundred percent service-connected disability as determined by the department of veterans' affairs, has an extra-schedular rating to include individual unemployability that brings the veteran's total disability rating to one hundred percent as determined by the department of veterans' affairs, died from service-connected disabilities, was a prisoner of war, or was declared missing in action, provided the spouse, widow, or widower, or the child's or stepchild'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, stepchild, 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, has a one hundred percent service-connected disability as determined by the department of veterans' affairs, has an extra-schedular rating to include individual unemployability that brings the veteran's total disability rating to one hundred percent as determined by the department of veterans' affairs, died from service-connected disabilities, was a prisoner of war, or was declared missing in action, provided the spouse, widow, or widower, or the child's or stepchild's other parent, establishes residency in this state and maintains that residency for a period of five years immediately preceding the spouse's, widow's,

widower's, child's, or stepchild's enrollment at an institution under the control of the state board of higher education; or

- d. A widow or widower of a veteran, as defined in section 37-01-40, who is receiving United States department of veterans affairs dependency and indemnity compensation and satisfies the residency requirement in subdivision a, b, or c. For purposes of this subdivision, sufficient proof of receipt of United States department of veterans affairs dependency and indemnity compensation includes correspondence directed to a qualifying veteran's widow or widower by the United States department of veterans affairs which indicates the widow or widower is a survivor of the qualifying veteran and is in receipt of United States department of veterans affairs dependency and indemnity compensation.

For purposes of this subsection, if the determination of disability or service-connected death occurs subsequent to the qualifying veteran's death through application of a law that renders a surviving spouse of a qualifying veteran eligible for United States department of veterans' affairs disability and indemnity compensation, the determination for purposes of qualification as a dependent under this subsection is presumed to precede the veteran's death.

**SECTION 2. 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], a disabled veteran who has a one hundred percent service-connected disability as determined by the department of veterans' affairs, or a disabled veteran who has an extra-schedular rating to include individual unemployability that brings the veteran's total disability rating to one hundred percent as determined by the department of veterans' affairs is entitled to display either a distinctive license plate or a standard plate that does not identify the veteran as a veteran or disabled veteran which is issued by the department at no cost to the qualifying veteran or surviving spouse or any other distinctive or vanity plate purchased from the department by the qualifying veteran or surviving spouse. This exemption applies to no more than two such motor vehicles owned by a disabled veteran at any one time. A surviving spouse of a disabled veteran ~~who has not remarried and~~ who is receiving United States department of veterans'~~veterans~~ affairs dependency and indemnity compensation ~~retains~~ is eligible for the exemption ~~of the deceased veteran who qualified~~ under this subdivision for one vehicle. If the determination of disability or service-connected death occurs subsequent to the qualifying veteran's death through application of a law that renders a surviving spouse of a qualifying veteran eligible for United States department of veterans affairs disability and indemnity compensation, the determination for purposes of the exemption under this subdivision is presumed to precede the veteran's death. Sufficient proof of receipt of United States department of veterans affairs dependency and indemnity compensation includes correspondence directed to a surviving spouse of a qualifying veteran by the United States department of veterans affairs which indicates the surviving spouse is a survivor of the qualifying veteran and is in receipt of United States department of veterans affairs dependency and indemnity compensation.

**SECTION 3. AMENDMENT.** Subsection 1 of section 57-02-08.8 of the North Dakota Century Code is amended and reenacted as follows:

1. A disabled veteran of the United States armed forces with an armed forces service-connected disability of fifty percent or greater or a disabled veteran who has an extra-schedular rating to include individual unemployability that brings the veteran's total disability rating to one hundred percent as determined by the department of veterans' affairs, 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 eight thousand one hundred dollars of taxable valuation of the homestead owned and occupied by the disabled veteran or ~~unremarried~~ surviving spouse 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 credit. ~~An unremarried~~A surviving spouse who is receiving United States department of veterans'~~veterans'~~ affairs dependency and indemnity compensation receives a one hundred percent credit as described in this subsection. If the determination of disability or service-connected death occurs subsequent to the qualifying veteran's death through application of a law that renders a surviving spouse of a qualifying veteran eligible for United States department of veterans affairs disability and indemnity compensation, the determination for purposes of the credit under this subsection is presumed to precede the veteran's death. Sufficient proof of receipt of United States department of veterans affairs dependency and indemnity compensation includes correspondence directed to a surviving spouse of a qualifying veteran by the United States department of veterans affairs which indicates the surviving spouse is a survivor of the qualifying veteran and is in receipt of United States department of veterans affairs dependency and indemnity compensation.

<sup>299</sup> **SECTION 4. AMENDMENT.** Subsection 1 of section 57-40.3-04 of the North Dakota Century Code is amended and reenacted as follows:

1. Any motor vehicle acquired by, or leased and in the possession of, a resident disabled veteran under the provisions of Pub. L. 79-663 [38 U.S.C. 3901], a resident disabled veteran who has a one hundred percent service-connected disability as determined by the department of veterans' affairs, or a resident disabled veteran who has an extra-schedular rating to include individual unemployability that brings the veteran's total disability rating to one hundred percent as determined by the department of veterans' affairs who registers, or is eligible to register, the vehicle with a distinctive license plate issued by the department of transportation under subdivision j of subsection 2 of section 39-04-18. ~~An unremarried~~A surviving spouse who is receiving United States department of veterans'~~veterans'~~ affairs dependency and indemnity compensation ~~retains~~is eligible for the exemption of the deceased, qualifying veteran in this subsection. If the determination of disability or service-connected death occurs subsequent to the qualifying veteran's death through application of a law that renders a surviving spouse of a qualifying veteran eligible for United States department of veterans affairs disability and indemnity compensation, the determination for purposes of the exemption under this subsection is presumed to precede the veteran's death. Sufficient proof of receipt of United States department of veterans affairs dependency

<sup>299</sup> Section 57-40.3-04 was also amended by section 1 of House Bill No. 1223, chapter 553.

and indemnity compensation includes correspondence directed to a surviving spouse of a qualifying veteran by the United States department of veterans affairs which indicates the surviving spouse is a survivor of the qualifying veteran and is in receipt of United States department of veterans affairs dependency and indemnity compensation.

**SECTION 5. EFFECTIVE DATE.** Section 3 of this Act is effective for taxable years beginning after December 31, 2022. Section 4 of this Act is effective for taxable events occurring after June 30, 2023.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 533

### HOUSE BILL NO. 1245

(Representatives Headland, Kasper, Nathe, D. Ruby)  
(Senators Kannianen, Weber)

AN ACT to amend and reenact sections 57-15-01 and 57-15-30.2 of the North Dakota Century Code, relating to communication of property tax levies with the public and financial reporting to the state auditor; to provide for the tax commissioner to study property tax transparency; and to provide for a legislative management report.

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

**SECTION 1. AMENDMENT.** Section 57-15-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-15-01. Levy in specific amounts - Exceptions.**

With the exception of special assessment taxes and such general taxes as may be definitely fixed by law, all state, county, city, township, school district, and park district taxes must be levied or voted in specific amounts of money. For purposes of communicating with the public and comparing the amount levied in the current taxable year to the amount levied in the preceding taxable year, taxing districts shall express levies in terms of dollars rather than mills.

**SECTION 2. AMENDMENT.** Section 57-15-30.2 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-15-30.2. Financial reporting requirements for taxing entities - County auditor - State auditor.**

1. The governing body of any county, city, township, school district, park district, recreation service district, rural fire protection district, rural ambulance service district, soil conservation district, conservancy district, water authority, or any other taxing entity authorized to levy property taxes or have property taxes levied on its behalf, in the year for which the levy will apply, shall file with the county auditor of each county in which the taxing entity is located, at a time and in a format prescribed by the county auditor, a financial report for the preceding calendar year showing the ending balances of each fund or account held by the taxing entity during that year.
2. By March first of each year, the county auditor of each county shall provide to the state auditor in an electronic format a financial report showing the ending balances of the county general fund and county road and bridge fund for the preceding calendar year, including the amount in each fund which is committed for a specific use. The county auditor shall provide the report to the state auditor regardless of whether an audit is complete.

#### **SECTION 3. TAX COMMISSIONER STUDY - PROPERTY TAX TRANSPARENCY - LEGISLATIVE MANAGEMENT REPORT.**

1. During the 2023-24 interim, the tax commissioner, state supervisor of assessments, and the chairmen of the finance and taxation standing committees of the house of representatives and the senate shall conduct a property tax transparency study. The study must be conducted in consultation with city and county organizations, including county auditors and county directors of tax equalization. The study must include consideration of the following:
  - a. Historical changes in property valuations, mill rates levied, and impacts on citizens' tax burdens in each taxing jurisdiction, including development of an effective mechanism to make the information available to the public;
  - b. Creation of a new uniform property tax statement form to increase transparency in property taxation;
  - c. Feasibility and desirability of transitioning counties to a uniform system of collecting and reporting property tax information, including the process to transition counties to a uniform chart of accounts, implementation and administration of a uniform chart of accounts, and the associated costs; and
  - d. Feasibility and desirability of implementation of a statewide property tax information system and the associated costs.
2. Before June 1, 2024, the tax commissioner, state supervisor of assessments, and the chairmen of the finance and taxation standing committees of the house of representatives and the senate shall report their findings and recommendations, together with any legislation required to implement the recommendations, to the legislative management.

Approved April 10, 2023

Filed April 11, 2023

## CHAPTER 534

### SENATE BILL NO. 2121

(Senators Weber, Dwyer, Patten)  
(Representatives Dockter, Pyle, Steiner)

AN ACT to amend and reenact subsection 2 of section 57-15-02.2 of the North Dakota Century Code, relating to the required content of the estimated property tax and budget hearing notice.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 57-15-02.2 of the North Dakota Century Code is amended and reenacted as follows:

2. By August thirty-first of each year the county treasurer shall provide a written notice to the owner of each parcel of taxable property with a total estimated property tax of at least one hundred dollars. The text of the notice must contain:
  - a. The date, time, and location of the public budget hearing for each of the taxing districts in which the property owner's parcel is located, which anticipate levying in excess of one hundred thousand dollars in the current year, and the location at which the taxing district's budget is available for review;
  - b. The true and full value of the property based on the best information available;
  - c. A column showing the actual property tax levy in dollars against the parcel by the taxing district that levied taxes against the parcel in the immediately preceding taxable year and a column showing the estimated property tax levy in dollars against the parcel by the taxing district levying tax in the taxable year for which the notice applies based on the preliminary budget statements of all taxing jurisdictions;
  - d. A column indicating the difference between the taxing district's total levy from the previous year and the taxing district's estimated levy with the word "INCREASE" printed in boldface type if the proposed tax levy is larger in dollars than the levy in dollars in the previous year;
  - e. Information identifying the estimated property tax savings that will be provided pursuant to section 57-20-07.1 based on the best information available; ~~and~~
  - f. A statement that there will be an opportunity for citizens to present oral or written comments regarding each taxing district's property tax levy; and
  - g. The actual amount of the special assessment installment payable against the parcel in the immediately preceding taxable year.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 535

### SENATE BILL NO. 2178

(Senators Kannianen, Kessel, Rust)  
(Representatives Fegley, Hatlestad, Longmuir)

AN ACT to amend and reenact section 57-15-19.2 of the North Dakota Century Code, relating to township special road fund limitations.

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

**SECTION 1. AMENDMENT.** Section 57-15-19.2 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-15-19.2. Township supervisors authority to transfer funds into special road fund - Limitations - Use.**

The board of supervisors, at the time of the annual township meeting, upon resolution, may transfer or set aside a part or all of any funds into a special road fund, which fund must be separate and distinct from all other funds. The special road fund may not exceed the sum of ~~one~~five hundred thousand dollars for any one congressional township. The special road fund may be expended, at the option of the board of supervisors, for the purpose of road construction, graveling, snow removal, or surfacing.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 536

### HOUSE BILL NO. 1267

(Representatives Dockter, D. Anderson, Bosch, Headland, Nathe)  
(Senator Weber)

AN ACT to amend and reenact section 57-28-20 of the North Dakota Century Code, relating to the disposition of proceeds from tax lien foreclosures.

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

**SECTION 1. AMENDMENT.** Section 57-28-20 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-28-20. Disposition of proceeds of sales.**

All proceeds from the public or private sale of property under this chapter must be apportioned as regular tax payments are apportioned among and within taxing districts in which the property is located, as follows:

1. The county treasurer shall issue a regular tax receipt in the name of the county, beginning with the earliest year for which the taxes are delinquent. Tax receipts must be written for the amount of the tax, with penalty and interest. If the property ~~was sold~~:
  - a. ~~Sold~~ for an amount sufficient to cover all outstanding taxes, special assessments, penalties, interest, and associated costs ~~associated with~~ the time of selling the property, tax receipts must be written for all such years, and any remaining amount must be retained by the county for ninety days following the date of the sale. After the ninety-day retention period, any excess proceeds must be distributed:
    - a. ~~To the owner of the record title of the real estate listed in the notice of foreclosure of tax lien if the owner of record submitted an undisputed claim for the excess proceeds within the ninety-day retention period;~~
    - b. ~~To the clerk of the district court in the county in which all or a majority of the property is located if a disputed claim or multiple claims for the excess proceeds were submitted within the ninety-day retention period; or~~
    - c. ~~To the unclaimed property administrator under chapter 47-30.2 if a claim for the excess proceeds was not submitted within the ninety-day retention period as provided in subsection 3.~~
2. If the property is sold
  - b. Sold under a contract, the county treasurer shall issue tax receipts, beginning with the earliest year for which taxes or special assessments are delinquent, with penalty and interest, and all subsequent payments made on the contract must be applied to the earliest remaining unpaid taxes or special assessments. Any payment under the contract after all taxes, special assessments, penalties, interest, and associated costs

~~associated with the time of selling the property are paid must be retained by the county for ninety days following the date of the sale. After the ninety-day retention period, any excess proceeds must be distributed in the manner provided in subsection 43.~~

3. ~~If the property is sold~~
  - c. ~~Sold for less than the total amount of the taxes due, the treasurer shall write tax receipts beginning with the earliest year and for as many subsequent years as the proceeds realized from the sale will satisfy, and the remainder of any unpaid general taxes or special assessments must be canceled by the board of county commissioners.~~
2. If an owner of record title owns multiple parcels of property subject to foreclosure proceedings under this chapter, the county treasurer shall use the aggregate amount of outstanding taxes, special assessments, penalties, interest, and associated costs applicable to all parcels of property and the aggregate proceeds from all public or private sales of the parcels of property to determine the amount of excess proceeds, if any, available for distribution as provided in this section.
3. Excess proceeds under this section must be distributed:
  - a. To the owner of the record title of the real estate listed in the notice of foreclosure of tax lien if the owner of record submitted an undisputed claim for the excess proceeds within the ninety-day retention period;
  - b. To the clerk of the district court in the county in which all or a majority of the property is located if a disputed claim or multiple claims for the excess proceeds were submitted within the ninety-day retention period; or
  - c. To the unclaimed property administrator under chapter 47-30.2 if a claim for the excess proceeds was not submitted within the ninety-day retention period.
4. A city or county that acquires a tax deed to property shall make reasonable efforts to sell the property for the amount necessary to satisfy the outstanding taxes, penalties, and interest owed on the property and shall distribute any remaining sale proceeds in the manner provided in this chapter.

Approved April 21, 2023

Filed April 24, 2023

## CHAPTER 537

### HOUSE BILL NO. 1412

(Representatives Mitskog, Nelson)  
(Senator Bekkedahl)

AN ACT to amend and reenact sections 57-36-01, 57-36-02, 57-36-04, 57-36-05, 57-36-09, and 57-36-09.1 of the North Dakota Century Code, relating to licensing requirements and the sale of electronic smoking devices; and to provide a penalty.

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

<sup>300</sup> **SECTION 1. AMENDMENT.** Section 57-36-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-36-01. Definitions.**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Chewing tobacco" means any leaf tobacco that is intended to be placed in the mouth.
2. "Cigar" means any roll of tobacco wrapped in tobacco.
3. "Cigarette" means any roll for smoking made wholly or in part of tobacco or processed tobacco and encased in any material except tobacco. "Cigarette" The term also means any product of a cigarette-making machine.
4. "Cigarette-making machine" means a machine used for commercial purposes to process tobacco into a roll or tube, formed or made from any material other than tobacco, at a production rate of more than five rolls or tubes per minute.
5. "Consumer" means any person who has title to or possession of cigarettes, cigars, pipe tobacco, electronic smoking devices, or other tobacco products in storage, for use or other consumption in this state.
6. "Dealer" includes a retailer and any person other than a distributor who is engaged in the business of selling cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products, or any product of a cigarette-making machine.
7. "Distributor" includes any person engaged in the business of producing or manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products, or importing into this state cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products, for the purpose of distribution and sale thereof to dealers and retailers. The term also includes a dealer that fabricates, repackages, compounds, or mixes electronic smoking devices for purposes of sale to a consumer.

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<sup>300</sup> Section 57-36-01 was also amended by section 3 of House Bill No. 1057, chapter 530.

8. "Electronic smoking device" means a device that may be used to deliver an aerosolized, vaporized, or heated substance containing nicotine, regardless of whether the nicotine is natural or synthetic, to an individual inhaling from the device, and includes an electronic cigarette, e-cigar, e-pipe, vape pen, and e-hookah. The term includes any substance containing nicotine, regardless of whether the nicotine is natural or synthetic, that may be aerosolized, vaporized, or heated by the device, regardless of whether the device is sold separately. The term does not include:
  - a. A cigarette as defined in section 51-25-01;
  - b. A cigarette as defined in this section;
  - c. A drug, device, or combination product, as those terms are defined in the federal Food, Drug, and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.], approved for sale by the United States food and drug administration;  
or
  - d. A battery or battery charger when sold separately.
9. "Licensed dealer" means a dealer licensed under the provisions of this chapter.
- ~~9-10.~~ "Licensed distributor" means a distributor licensed under the provisions of this chapter.
- ~~40-11.~~ "Other tobacco products" means snuff and chewing tobacco.
- ~~44-12.~~ "Outlet" means each place of business from which tobacco products are sold.
13. "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability company, trust, or association however formed.
- ~~42-14.~~ "Pipe tobacco" means any processed tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.
- ~~43-15.~~ "Place of business" means a place where tobacco products are sold or where tobacco products are manufactured, fabricated, stored, or kept for purposes of sale or consumption.
16. "Retailer" means a person engaged in the business of selling cigarettes, cigars, pipe tobacco, electronic smoking devices, or other tobacco products to consumers.
17. "Sale" or "sell" applies to gifts, exchanges, and barter.
- ~~44-18.~~ "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be placed in the mouth.
- ~~45-19.~~ "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco, electronic smoking devices, or other tobacco products for use or consumption in this state.

46-20. "Use" means the exercise of any right or power incidental to the ownership or possession of cigarettes, cigars, pipe tobacco, electronic smoking devices, or other tobacco products.

**SECTION 2. AMENDMENT.** Section 57-36-02 of the North Dakota Century Code is amended and reenacted as follows:

**57-36-02. Distributors and dealers to be licensed.**

1. Each person engaged in the business of selling cigarettes, cigarette papers, snuff, cigars, electronic smoking devices, or tobacco in this state, including any distributor or dealer, ~~must~~shall secure a license from the attorney general before engaging or continuing to engage in business.
2. ~~A separate application and license is required for each distributor at each outlet or place of business operated or maintained by a distributor within the state, and a separate dealer's license is required for each retail outlet when a person owns or controls more than one place of business dealing in cigarettes, cigarette papers, snuff, cigars, or tobacco. No retailer will be granted a distributor's license except a retailer who, in the usual course of business, performed a distributor's or wholesaler's function for at least one year prior to filing the license application. The application prescribed by the attorney general must include the name and address of the applicant, the address and place of business, the type of business, and other information as required for the proper administration of this chapter.~~
  - a. A distributor's license does not authorize the distributor to make retail sales.
  - b. A distributor may not be granted a dealer's license unless the distributor has possessed a distributor's license issued under this chapter for at least one year before filing an application for a dealer's license.
  - c. Notwithstanding subdivision b, a person that can demonstrate to the satisfaction of the attorney general that the person has been engaged, in the normal course of business, in the sale of electronic smoking devices before July 1, 2018, may be granted a dealer's license.
  - d. Each application for a ~~wholesale or~~ distributor's outlet license must be accompanied by a fee of twenty-five dollars and a surety bond approved by the attorney general.
3. A separate application and license is required for each outlet or place of business operated or maintained by a dealer in this state.
  - a. A dealer may not sell tobacco products purchased from a distributor not licensed under this chapter.
  - b. A person issued a dealer's license under this chapter may not be issued a distributor's license.
4. Each application for a dealer's outlet or place of business license must be accompanied by a fee of fifteen dollars.
5. A license application prescribed by the attorney general must include the name and address of the applicant, the address and place of business, the

type of business, and other information as required for the administration of this chapter.

6. A reinstatement fee of fifty dollars is required in addition to the annual license fee for each license renewal applied for after June thirtieth. The total reinstatement fee may not exceed five hundred dollars for any one licensee in any fiscal year. ~~A distributor's license does not authorize the holder to make retail sales.~~
7. Each license issued must be prominently displayed on the premises~~place of business or outlet~~ covered by the license.

<sup>301</sup> **SECTION 3. AMENDMENT.** Section 57-36-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-36-04. Revocation of license - Penalty.**

The attorney general may revoke the license of any dealer or distributor for failure to comply with any of the provisions of this chapter, or any of the rules or regulations prescribed by the tax commissioner or the attorney general. When a license has been legally revoked, no license may be issued again to the licensee for a period of one year thereafter. A person may not sell any cigarettes, cigarette papers, snuff, cigars, electronic smoking devices, or tobacco after that person's license has been revoked as provided in this chapter.

**SECTION 4. AMENDMENT.** Section 57-36-05 of the North Dakota Century Code is amended and reenacted as follows:

**57-36-05. Unlawful to sell without license.**

A dealer or distributor may not sell cigarettes, cigarette papers, snuff, cigars, electronic smoking devices, or tobacco in this state at wholesale or at retail unless a license has been issued to that dealer or distributor as prescribed by this chapter, and a person may not sell, offer for sale, or possess with the intent to sell, any cigarettes, cigarette papers, snuff, cigars, electronic smoking devices, or tobacco without such license.

**SECTION 5. AMENDMENT.** Section 57-36-09 of the North Dakota Century Code is amended and reenacted as follows:

**57-36-09. Records to be kept by distributors and reports made - Penalty.**

Distributors shall keep records and make reports relating to purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products made by them, and must be punished for failure so to do, as follows:

1. Each distributor who shall dispose of cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products shall keep and preserve for ~~one year~~three years all invoices of cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products purchased by the distributor and shall permit the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner, to inspect and examine all taxable merchandise, invoices,

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<sup>301</sup> Section 57-36-04 was also amended by section 9 of House Bill No. 1274, chapter 448.

receipts, books, papers, and memoranda as may be deemed necessary by the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner in determining the amount of the tax as may be yet due. Each person selling or otherwise disposing of cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products as a distributor shall keep a record of all sales made within the state showing the name and address of the purchaser and the date of sale. For sales of other tobacco products, the records must also include the net weight in ounces, as listed by the manufacturer.

2. On or before the fifteenth day of each month, each licensed distributor, on such form as the state tax commissioner shall prescribe, shall report to the tax commissioner all purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products made from or to any persons either within or without this state during the preceding month. For sales of other tobacco products, each licensed distributor shall also report to the tax commissioner the net weight in ounces, as listed by the manufacturer. The tax levied by this chapter is payable monthly and must be remitted to the tax commissioner by each licensed distributor on or before the fifteenth day of the month following the monthly period.
3. Any person failing to file any prescribed form or return or to pay any tax within the time required or permitted by this section is subject to a penalty of five percent of the amount of tax due 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 the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

**SECTION 6. AMENDMENT.** Section 57-36-09.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-36-09.1. WarehouseOutlet - Record of deliveries and shipments.**

Records of all deliveries of shipments of cigarettes and, snuff, cigars, electronic smoking devices, or other tobacco products from a licensed ~~public warehouseoutlet~~ to persons within this state must be kept by the ~~warehouseoutlet~~ and be available to the tax commissioner for inspection. They must show the name and address of the consignee, the date, the quantity and purchase price of cigarettes, snuff, cigars, electronic smoking devices, or other tobacco products delivered, and such other information as the tax commissioner may require. These records must be preserved for ~~one year~~three years from the date of delivery of the cigarettes, snuff, cigars, electronic smoking devices, or other tobacco products.

Approved March 23, 2023

Filed March 23, 2023

## CHAPTER 538

### HOUSE BILL NO. 1455

(Representatives O'Brien, Hagert, Monson, Roers Jones, Schauer, Schreiber-Beck)  
(Senators Kreun, Patten, J. Roers, Wanzek)

AN ACT to create and enact a new subdivision to subsection 3 of section 54-35-26, a new section to chapter 57-39.2, and a new subdivision to subsection 3 of section 57-40.2-03.3 of the North Dakota Century Code, relating to evaluation of economic development tax incentives and a sales and use tax exemption for raw materials, single-use product contact systems, and reagents used for biologic manufacturing; to provide for a legislative management report; to provide an effective date; and to provide an expiration date.

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

<sup>302</sup> **SECTION 1.** A new subdivision to subsection 3 of section 54-35-26 of the North Dakota Century Code is created and enacted as follows:

Sales and use tax exemption for raw materials, single-use product contact systems, and reagents used for biologic manufacturing.

**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 raw materials, single-use product contact systems, and reagents used for biologic manufacturing - Report.**

1. Gross receipts from sales of raw materials, single-use product contact systems, and reagents used directly for discovery, testing, screening, and production for biologic manufacturing in this state are exempt from taxes under this chapter.
2. To receive the exemption at the time of purchase, the taxpayer must receive from the tax commissioner a certificate that the raw materials, single-use product contact systems, or reagents qualify for the exemption.
3. For purposes of this section:
  - a. "Biologic manufacturing" means the manufacturing process used to support biologic product discovery, development, generation, product impurity removal, chemical or physical product alteration, and analysis of in-process products to final deliverable products which occurs exclusively within this state.
  - b. "Single-use product contact systems" means tubing, capsule filters, ion exchange membrane chromatography devices, mixers, bioreactors, sterile fluid containment bags, connection devices, and sampling receptacles.

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<sup>302</sup> Section 54-35-26 was also amended by section 1 of House Bill No. 1511, chapter 540, and section 1 of House Bill No. 1168, chapter 539.

4. a. By April first of each year, each taxpayer that received the exemption under this section in the preceding calendar year shall file with the tax commissioner, on forms and in the manner prescribed by the tax commissioner, a report showing for the calendar year preceding the reporting deadline in this subdivision, the taxpayer's:
- (1) Total sales and use tax liability exempted under this section;
  - (2) Total gross payroll;
  - (3) Total property taxes paid and square footage of buildings owned by the taxpayer;
  - (4) Total North Dakota workforce safety and insurance premiums paid;
  - (5) North Dakota unemployment taxes paid; and
  - (6) Total state income tax withheld by the taxpayer.
- b. Failure to file the report required under subdivision a is cause to disallow the exemption due to noncompliance. The tax commissioner shall provide notice of the disallowed exemption to the taxpayer and assess any sales and use tax due. An assessment of tax made under this subsection is final and irrevocably fixed.
- c. By June first of each year, the tax commissioner shall submit to the legislative management a written report summarizing the information received under subdivision a, including a comparison of information received in the current calendar year with data received in the preceding calendar year.

<sup>303</sup> **SECTION 3.** A new subdivision to subsection 3 of section 57-40.2-03.3 of the North Dakota Century Code is created and enacted as follows:

Raw materials, single-use product contact systems, and reagents used for biologic manufacturing as authorized or approved for exemption by the tax commissioner under section 2 of this Act.

**SECTION 4. EFFECTIVE DATE - EXPIRATION DATE.** Sections 2 and 3 of this Act are effective for taxable events occurring after June 30, 2023, and before July 1, 2029, and are thereafter ineffective.

Approved April 26, 2023

Filed April 26, 2023

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<sup>303</sup> Section 57-40.2-03.3 was also amended by section 2 of House Bill No. 1430, chapter 546, section 3 of House Bill No. 1511, chapter 540, and section 8 of Senate Bill No. 2006, chapter 38.

## CHAPTER 539

### HOUSE BILL NO. 1168

(Representatives Steiner, Dockter, Hatlestad, Lefor, Porter, Rohr, Satrom, Swiontek,  
Wagner)  
(Senators Rummel, Sickler)

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 the provision of an income tax credit for purchases of manufacturing and animal agricultural machinery and equipment to automate a manufacturing or animal agricultural process; to amend and reenact subdivision j of subsection 3 of section 54-35-26 of the North Dakota Century Code, relating to evaluation of economic development tax incentives; and to provide an effective date.

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

<sup>304</sup> **SECTION 1. AMENDMENT.** Subdivision j of subsection 3 of section 54-35-26 of the North Dakota Century Code is amended and reenacted as follows:

- j. ~~Manufacturing—automation—equipment—credit~~ Twenty-first century manufacturing and animal agricultural workforce incentive.

**SECTION 2.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

#### Twenty-first century manufacturing and animal agricultural workforce incentive.

1. A taxpayer that is a primary sector business is allowed a nonrefundable credit against the tax imposed under section 57-38-30 or 57-38-30.3 for purchases of qualifying machinery and equipment in this state to improve job quality or increase productivity. The amount of the credit under this section is fifteen percent of the cost of the qualifying machinery and equipment purchased in the taxable year. Qualified expenditures under this section may not be used in the calculation of any other income tax deduction or credit allowed under this chapter.
2. For purposes of this section:
  - a. "Animal agricultural machinery and equipment" means new or used automation and robotic equipment used to upgrade or advance an animal agricultural process. The term does not include replacement automation and robotic equipment that does not upgrade or advance an animal agricultural process.
  - b. "Animal agricultural process" means the breeding, raising, harvesting, or processing of animals for producing meat, dairy, or eggs, or meat, dairy, or

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<sup>304</sup> Section 54-35-26 was also amended by section 1 of House Bill No. 1455, chapter 538, and section 1 of House Bill No. 1511, chapter 540.

- egg products. For purposes of this subdivision, "animal" means beef or dairy cattle, swine, sheep, goats, bison, farmed elk, or poultry.
- c. "First-time claimant" means a taxpayer that has not previously claimed a credit against the tax imposed under section 57-38-30 or 57-38-30.3 for purchases of animal agricultural machinery and equipment or manufacturing machinery and equipment for the purpose of automating manufacturing or animal agricultural processes.
  - d. "Improved job quality" means a five percent increase in average wages or a five percent improvement in workplace safety as documented through participation in workforce safety and insurance safety incentive programs.
  - e. "Increased productivity" means no less than a five percent increase in output or a five percent increase in the number of units produced per automated line per time period.
  - f. "Manufacturing machinery and equipment" means new or used automation and robotic equipment used to upgrade or advance a manufacturing process. The term does not include replacement automation and robotic equipment that does not upgrade or advance a manufacturing process.
  - g. "Primary sector business" has the meaning provided in section 1-01-49.
  - h. "Purchase" includes qualifying machinery and equipment acquired under a capital lease only for the taxable year in which the lease is executed. A capital lease is a lease which meets generally accepted accounting principles. The qualifying costs of the equipment acquired under a capital lease is the fair market value of the equipment at the inception of the lease.
  - i. "Qualifying machinery and equipment" means animal agricultural machinery and equipment and manufacturing machinery and equipment for the purpose of automating manufacturing or animal agricultural processes.
- 3. The taxpayer shall claim the total credit amount for the taxable year in which the qualifying machinery and equipment are purchased. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for any taxable year.
  - 4. If the amount of the credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the next five succeeding taxable years.
  - 5. a. The aggregate amount of credits allowed each calendar year under this section may not exceed three million dollars.
    - (1) From the aggregate credit limit in this subdivision, the tax commissioner shall designate:
      - (a) Five hundred thousand dollars for credits claimed by first-time claimants for animal agricultural machinery and equipment for the purpose of automating animal agricultural processes; and

- (b) Five hundred thousand dollars for credits claimed by first-time claimants for manufacturing machinery and equipment for the purpose of automating manufacturing processes.
- (2) If the portion of the aggregate limit which is designated for first-time claimants in paragraph 1 is greater than the amount of credits claimed by the corresponding first-time claimants, the remaining portion of the aggregate limit which is designated for the first-time claimants in paragraph 1 must be included in the amount available to claimants that are not first-time claimants.
- (3) If the portion of the aggregate limit which is not designated for first-time claimants in paragraph 1 is greater than the amount of credits claimed by claimants that are not first-time claimants, the remaining portion of the aggregate limit which is not designated for first-time claimants in paragraph 1 must be included in the amount available to first-time claimants to the extent necessary to satisfy all first-time claims.
- (4) If the sum of the portion of the aggregate limit which is designated for the corresponding first-time claimants in paragraph 1 and any amount available to the first-time claimants under paragraph 3 is less than the amount of credits claimed by the first-time claimants, the tax commissioner shall prorate the credits among the first-time claimants.
- b. If the maximum amount of allowed credits are not claimed in any calendar year, any remaining unclaimed credits may be carried forward and made available in the next succeeding calendar year.
- c. After determining the credits claimed by the first-time claimants as provided in subdivision a, if the aggregate amount of credits claimed under this section by claimants that are not first-time claimants exceeds the amount available to claimants that are not first-time claimants in a calendar year, the tax commissioner shall prorate the credits among the claimants that are not first-time claimants.
6. 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.
7. A 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 section 57-38-30.3.
8. The department of commerce shall provide the tax commissioner the name, address, and federal identification number or social security number of the taxpayer approved as qualifying for the credit under this section, and a list of those items approved as a qualified expenditure by the department. The

taxpayer claiming the credit shall file with the taxpayer's return, on forms prescribed by the tax commissioner, the following information:

- a. The name, address, and federal identification number or social security number of the taxpayer that made the purchase; and
- b. An itemization of:
  - (1) Each item of machinery or equipment purchased for automation, including a description of the equipment or system being upgraded or advanced, and an explanation of how the upgrade or advancement will improve job quality or increase productivity;
  - (2) The amount paid for each item of machinery or equipment if the amount paid for the machinery or equipment is being used as a basis for calculating the credit; and
  - (3) The date on which payment for the purchase was made.
9. Within one year after claiming a tax credit under this section, a taxpayer shall file with the tax commissioner a report that documents the improved job quality or increased productivity required under this section and any other information the tax commissioner determines is necessary for administration of this section. Failure to document the improved job quality or increased productivity requirements is cause to disallow the credit attributable to the noncompliance. The tax commissioner shall provide notice of the disallowed credit to the taxpayer. Within ninety days after the date of the notice, the taxpayer shall file an amended return for each taxable year in which the disallowed credit reduced the taxpayer's tax liability and pay the amount due. If an amended return is not filed timely, the tax commissioner shall disallow the credit and assess any tax due. An assessment of tax made under this subsection is final and irrevocably fixed.
10. Notwithstanding the time limitations contained in section 57-38-38, this section does not prohibit the tax commissioner from conducting an examination of the credit claimed and assessing additional tax due under section 57-38-38.

**305 SECTION 3.** A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Twenty-first century manufacturing and animal agricultural workforce incentive under section 2 of this Act.

**SECTION 4. EFFECTIVE DATE.** Sections 2 and 3 of this Act are effective for taxable years beginning after December 31, 2022.

Approved May 8, 2023

Filed May 9, 2023

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<sup>305</sup> Section 57-38-30.3 was also amended by section 3 of House Bill No. 1176, chapter 542, and section 2 of House Bill No. 1383, chapter 541, section 1 of Senate Bill No. 2147, chapter 545, section 4 of House Bill No. 1158, chapter 527, and section 1 of Senate Bill No. 2293, chapter 544.

## CHAPTER 540

### HOUSE BILL NO. 1511

(Representatives Novak, Bosch, Hagert, Headland, Ista, Mock, Porter)  
(Senators Kannianen, Kreun, Patten)

AN ACT to create and enact a new subdivision to subsection 3 of section 54-35-26, a new section to chapter 57-39.2, a new subdivision to subsection 3 of section 57-40.2-03.3, and a new section to chapter 57-61 of the North Dakota Century Code, relating to evaluation of economic development tax incentives, a sales and use tax exemption for materials used to construct or expand a coal processing facility that utilizes coal as a feedstock, and severance and sales and use tax exemptions for coal used in a coal processing facility that utilizes coal as a feedstock; and to provide an effective date.

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

<sup>306</sup> **SECTION 1.** A new subdivision to subsection 3 of section 54-35-26 of the North Dakota Century Code is created and enacted as follows:

Sales and use tax exemption for materials used to construct or expand a coal processing facility that utilizes coal as a feedstock.

**SECTION 2.** A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

#### **Sales and use tax exemption for materials used to construct or expand a coal processing facility that utilizes coal as a feedstock.**

1. Gross receipts from sales of tangible personal property used to construct or expand a coal processing facility that utilizes coal as a feedstock in this state are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated in the structure of the facility or used in the construction process to the point of having no residual economic value.
2. For purposes of this section:
  - a. "Coal processing facility that utilizes coal as a feedstock" means a facility that:
    - (1) Extracts critical minerals or rare earth elements from lignite coal; or
    - (2) Creates tangible personal property other than electricity, water, gas, or steam from lignite coal, including lignite coal from which critical minerals or rare earth elements have been extracted.
  - b. "Critical mineral" means a nonfuel mineral or mineral material essential to the economic or national security of the United States and which has a supply chain vulnerable to disruption. The term includes aluminum.

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<sup>306</sup> Section 54-35-26 was also amended by section 1 of House Bill No. 1455, chapter 538, and section 1 of House Bill No. 1168, chapter 539.

antimony, arsenic, barite, bauxite, beryllium, bismuth, cesium, chromium, cobalt, fluorspar, gallium, germanium, graphite, hafnium, helium, indium, lithium, magnesium, manganese, niobium, platinum group metals, potash, the rare earth elements group, rhenium, rubidium, scandium, strontium, tantalum, tellurium, tin, titanium, tungsten, uranium, vanadium, and zirconium.

- c. "Rare earth elements" means any of a series of metallic elements of which the oxides are classed as rare earths and which include the elements of the lanthanide series, yttrium and scandium.
3. The owner of the facility must receive from the tax commissioner a certificate that the tangible personal property used to construct or expand a facility qualifying under this section which the owner intends to purchase qualifies for the exemption.

<sup>307</sup> **SECTION 3.** A new subdivision to subsection 3 of section 57-40.2-03.3 of the North Dakota Century Code is created and enacted as follows:

Tangible personal property as authorized or approved for exemption by the tax commissioner as provided in section 2 of this Act.

**SECTION 4.** A new section to chapter 57-61 of the North Dakota Century Code is created and enacted as follows:

**Severance and sales and use tax exemptions for coal used in a coal processing facility that utilizes coal as a feedstock.**

1. Severance tax may not be imposed on the first one million tons [907,184.74 metric tons] of coal per year used as a feedstock by a coal processing facility that utilizes coal as a feedstock in this state as defined in section 2 of this Act.
2. The owner or operator of a coal processing facility that utilizes coal as a feedstock shall certify to the coal mine owner or operator the amount of coal measured in tons:
  - a. Purchased for use as a feedstock by the facility.
  - b. Used as a feedstock by the facility for extraction of critical minerals or rare earth elements from lignite coal.
  - c. Used as a feedstock by the facility to create tangible personal property other than electricity, water, gas, or steam from lignite coal, including lignite coal from which critical minerals or rare earth elements have been extracted.
  - d. Resold or used in any manner other than as a feedstock at the facility, including use in an electrical generating plant or coal gasification facility.
3. The coal mine owner or operator shall report the amounts certified under subsection 2. The amount of coal certified under subdivision d of subsection 2

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<sup>307</sup> Section 57-40.2-03.3 was also amended by section 2 of House Bill No. 1430, chapter 546, section 3 of House Bill No. 1455, chapter 538, and section 8 of Senate Bill No. 2006, chapter 38.

is not eligible for the exemption in this section. The coal mine owner or operator shall report the amount of coal certified under subdivision d of subsection 2 on its return for the month following the month of certification and shall remit the severance tax due with the return. The tax commissioner shall waive penalty and interest under section 57-61-05 for severance tax remitted in accordance with this subsection.

**SECTION 5. EFFECTIVE DATE.** Sections 2, 3, and 4 of this Act are effective for taxable events occurring after June 30, 2023.

Approved April 7, 2023

Filed April 10, 2023

## CHAPTER 541

### HOUSE BILL NO. 1383

(Representatives Boschee, Bosch, Finley-DeVillie, Hagert, Ista, Nathe, Schreiber-Beck, Steiner)

(Senators Kannianen, Patten, Piepkorn, Rummel)

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 the provision of an income tax credit for qualified compensation paid to an apprentice; 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:

##### **Apprenticeship tax credit.**

1. A taxpayer is entitled to a credit as determined under this section against the income tax liability under section 57-38-30 or 57-38-30.3 for qualified compensation paid to an individual who is an apprentice in an apprenticeship program as provided in title 29, Code of Federal Regulations, subtitle a, part 29 or an apprentice electrician registered under chapter 43-09 and is employed in this state by the taxpayer.
2. To qualify for the credit under this section, a taxpayer shall:
  - a. Directly employ, supervise, and evaluate a qualified apprentice in an apprenticeship position located in this state.
  - b. For a taxpayer that employs an individual who is an apprentice in an apprenticeship program as provided in title 29, Code of Federal Regulations, subtitle a, part 29, obtain a certification from the United States department of labor, bureau of apprenticeship and training, stating the taxpayer has met all the requirements and qualifications of the apprenticeship program as provided in title 29, Code of Federal Regulations, subtitle a, part 29 and submit to the tax commissioner proof of the certification.
  - c. Submit any other information prescribed by the tax commissioner.
3. Subject to the limitations provided in this subsection, the amount of the credit to which a taxpayer is entitled is ten percent of the stipend or salary paid to a qualified apprentice employed by the taxpayer.
  - a. The aggregate amount of credits allowed to a taxpayer under this section may not exceed three thousand dollars in total credits for all taxable years combined.
  - b. The tax credit under this section applies to a stipend or salary for not more than five apprentices employed by the taxpayer at the same time.

- c. The credit allowed under this section may not exceed a taxpayer's liability for tax under this chapter. Any credit amount exceeding a taxpayer's liability for the taxable year may not be claimed as a carryback or carryforward.
4. A 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 passthrough entity level must be allowed to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
5. The tax commissioner shall prescribe, design, and make available all forms necessary to effectuate this section.

<sup>308</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:

Apprenticeship tax credit under section 1 of this Act.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2022.

Approved April 21, 2023

Filed April 24, 2023

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<sup>308</sup> Section 57-38-30.3 was also amended by section 3 of House Bill No. 1168, chapter 539, section 3 of House Bill No. 1176, chapter 542, section 1 of Senate Bill No. 2147, chapter 545, section 4 of House Bill No. 1158, chapter 527, and section 1 of Senate Bill No. 2293, chapter 544.

## CHAPTER 542

### HOUSE BILL NO. 1176

(Representatives S. Olson, Fisher, Frelich, Koppelman, O'Brien, Satrom)

AN ACT to create and enact two new sections to chapter 57-38 and two new subdivisions to subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to an adoption tax credit and a tax credit for contributions to a maternity home, child-placing agency, or pregnancy help center; 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:

##### **Adoption tax credit.**

1. A taxpayer is entitled to a credit against the income tax liability under section 57-38-30.3 for adoption expenses.
2. The credit is equal to ten percent of the federal adoption credit allowed under section 23 of the Internal Revenue Code [26 U.S.C. 23] claimed by the taxpayer in the current taxable year.
3. The credit allowed under this section may not exceed fifty percent of the taxpayer's liability for tax under this chapter. Any credit amount exceeding fifty percent of the taxpayer's liability for the taxable year may be carried forward to each of the three succeeding taxable years, subject to the limitation in this subsection.

**SECTION 2.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

##### **Tax credit for contributions to a maternity home, child-placing agency, or pregnancy help center.**

1. A taxpayer is entitled to a credit against the income tax liability under section 57-38-30 or 57-38-30.3 for contributions made to a maternity home, child-placing agency, or pregnancy help center.
2. Subject to the limitations in subsection 3, the credit is equal to the aggregate amount of charitable contributions made by the taxpayer during the taxable year to a maternity home, child-placing agency, or pregnancy help center.
3. The credit allowed under this section may not exceed fifty percent of the taxpayer's liability for tax under this chapter or two thousand five hundred dollars, whichever is less. Any credit amount exceeding the limitation in this subsection for the taxable year may not be claimed as a carryback or carryforward.

4. A 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 passthrough entity level must be allowed to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
5. For purposes of this subsection:
  - a. "Child-placing agency" means a child-placing agency under chapter 50-12.
  - b. "Maternity home" means a nonprofit facility operating for the purpose of providing shelter and care to a pregnant woman or parent of a child twelve months of age or younger.
  - c. "Pregnancy help center" means a nongovernmental entity eligible for disbursements pursuant to section 50-06-26.

<sup>309</sup> **SECTION 3.** Two new subdivisions to subsection 7 of section 57-38-30.3 of the North Dakota Century Code are created and enacted as follows:

Adoption tax credit under section 1 of this Act.

Tax credit for contributions to a maternity home, child-placing agency, or pregnancy help center under section 2 of this Act.

**SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2022.

Approved April 21, 2023

Filed April 24, 2023

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<sup>309</sup> Section 57-38-30.3 was also amended by section 3 of House Bill No. 1168, chapter 539, and section 2 of House Bill No. 1383, chapter 541, section 1 of Senate Bill No. 2147, chapter 545, section 4 of House Bill No. 1158, chapter 527, and section 1 of Senate Bill No. 2293, chapter 544.

## CHAPTER 543

### HOUSE BILL NO. 1244

(Representative Headland)

AN ACT to amend and reenact section 57-38-01.16 of the North Dakota Century Code, relating to the income tax credit for employment of individuals with developmental disabilities or severe mental illness; and to provide an effective date.

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

**SECTION 1. 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 individuals with developmental disabilities or ~~chronically mentally ill persons~~severe mental illness. (~~Effective after the first two taxable years beginning after December 31, 2020~~)**

1. A taxpayer filing an income tax return under this chapter may claim a credit against the tax liability imposed under section 57-38-30 or section 57-38-30.3 for a portion of the wages paid to an employee with a developmental disability or a ~~chronically mentally ill employee~~severe mental illness.
2. The credit allowed under this section equals ~~five~~twenty-five percent of up to six thousand dollars in wages paid ~~during the first twelve months of employment~~annually by the taxpayer for each employee with a developmental disability or ~~chronically mentally ill employee of the taxpayer~~severe mental illness, if the department of health and human services' vocational rehabilitation division determines the individual has a most significant disability, is eligible for services, and requires customized employment or supported employment to obtain competitive integrated employment.
3. 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.
4. The total of credits allowed under this section may not exceed fifty percent of the taxpayer's liability under this chapter.
5. A taxpayer shall apply, on a form and in the manner prescribed by the department of health and human services' vocational rehabilitation division, for a determination of whether an employee meets the requirements under subsection 2. If an employee meets the requirements, a letter of certification containing the names of the taxpayer and the qualifying employee must be issued to the taxpayer.
6. A taxpayer claiming a credit under this section shall include a copy of the certification letter received from the department of health and human services'

vocational rehabilitation division with the taxpayer's return filed under this chapter for each taxable year the credit is claimed.

7. A 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 section against the individual's state income tax liability under section 57-38-30.3.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2022.

Approved April 10, 2023

Filed April 11, 2023

## CHAPTER 544

### SENATE BILL NO. 2293

(Senators Meyer, Kannianen)  
(Representatives Dockter, Headland, Nathe, Vetter)

AN ACT to amend and reenact subdivision g of subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to an income tax deduction for military pay; and to provide an effective date.

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

<sup>310</sup> **SECTION 1. AMENDMENT.** Subdivision g of subsection 2 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

- g. ~~Reduced by the amount of military pay received by the taxpayer as payment for services performed when mobilized under title 10 United States Code federal service as a member of the armed forces of the United States on federal active duty, member of the national guard, or reserve member of the armed forces of the United States, to the extent that military pay is included in North Dakota taxable income of the taxpayer. This subdivision does not apply to~~ For purposes of this subdivision, "military pay" includes all federal service while attending annual pay for training, basic military training, or professional military education, mobilization, and bonuses and state pay when called to support an emergency on state active duty.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2022.

Approved March 27, 2023

Filed March 27, 2023

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<sup>310</sup> Section 57-38-30.3 was also amended by section 3 of House Bill No. 1168, chapter 539, section 3 of House Bill No. 1176, chapter 542, section 2 of House Bill No. 1383, chapter 541, section 1 of Senate Bill No. 2147, chapter 545, and section 4 of House Bill No. 1158, chapter 527.

## CHAPTER 545

### SENATE BILL NO. 2147

(Senators Larson, Bekkedahl, Paulson)  
(Representatives Dockter, Vetter)

AN ACT to create and enact a new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to an income tax deduction for retired law enforcement personnel benefits; and to provide an effective date.

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

<sup>311</sup> **SECTION 1.** A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Reduced by the amount of retired law enforcement personnel benefits received by a taxpayer who has served a combined total of at least twenty years as a peace officer or has medically retired from the taxpayer's duties as a peace officer with a medical certificate due to a permanent mental or physical disability that rendered the taxpayer unable to discharge the taxpayer's duties as a peace officer, but only to the extent the amount was included in federal taxable income. For purposes of this subdivision:

- (1) "Peace officer" means a public servant authorized by law or by a government agency or branch of the United States, a state, or a political subdivision of a state to enforce the law and to conduct or engage in investigations of violations of the law.
- (2) "Retired law enforcement personnel benefits" means retirement income received by a taxpayer eligible to receive retirement income attributable to the taxpayer's employment as a peace officer from a retirement plan maintained by or through the employer from which the taxpayer retired as a peace officer.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2022.

Approved April 13, 2023

Filed April 14, 2023

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<sup>311</sup> Section 57-38-30.3 was also amended by section 3 of House Bill No. 1168, chapter 539, section 3 of House Bill No. 1176, chapter 542, section 2 of House Bill No. 1383, chapter 541, section 4 of House Bill No. 1158, chapter 527, and section 1 of Senate Bill No. 2293, chapter 544.

## CHAPTER 546

### HOUSE BILL NO. 1430

(Representatives Headland, Lefor, Louser, Porter)  
(Senators Hogue, Kannianen, Kessel)

AN ACT to create and enact a new section to chapter 57-39.2 and a new subdivision to subsection 3 of section 57-40.2-03.3 of the North Dakota Century Code, relating to construction, expansion, or environmental upgrade of a renewable feedstock refinery; and to provide an effective date.

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

**SECTION 1.** A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

**Sales and use tax exemption for materials used in construction, expansion, or environmental upgrade of a renewable feedstock refinery.**

1. As used in this section:
  - a. "Environmental upgrade" means an investment of more 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 renewable feedstock refinery.
  - b. "Renewable feedstock" means "renewable biomass" as defined in 40 CFR section 80.1401.
  - c. "Renewable feedstock refinery" means a facility in this state which creates gasoline, jet fuel, or other transportation fuels by refining renewable feedstock through deoxygenation and has a nameplate capacity of processing of no fewer than five thousand barrels of renewable feedstock per day, and all adjacent units that are used in the processing of renewable feedstock.
2. Gross receipts from sales of tangible personal property used in constructing, expanding, or making an environmental upgrade to a renewable feedstock refinery are exempt from taxes under this chapter.
3. The exemption may be received only at the time of purchase. To receive the exemption, the owner of the renewable feedstock refinery must receive a certificate from the tax commissioner indicating the tangible personal property used to construct, expand, or make environmental upgrades to a renewable feedstock refinery that the owner intends to purchase qualifies for the exemption under this section.
4. This chapter and chapter 57-40.2 apply to an exemption under this section.

<sup>312</sup> **SECTION 2.** A new subdivision to subsection 3 of section 57-40.2-03.3 of the North Dakota Century Code is created and enacted as follows:

Tangible personal property as authorized or approved for exemption by the tax commissioner as provided in section 1 of this Act.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2023.

Approved April 11, 2023

Filed April 12, 2023

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<sup>312</sup> Section 57-40.2-03.3 was also amended by section 3 of House Bill No. 1455, chapter 538, section 3 of House Bill No. 1511, chapter 540, and section 8 of Senate Bill No. 2006, chapter 38.

## CHAPTER 547

### HOUSE BILL NO. 1177

(Representatives S. Olson, Koppelman, O'Brien, Satrom)  
(Senators Cleary, Myrdal)

AN ACT to create and enact a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to a sales tax exemption for child diapers; and to provide an effective date.

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

<sup>313</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 sales of children's diapers as defined in subdivision d of subsection 26 of section 57-39.2-04.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2023.

Approved April 18, 2023

Filed April 19, 2023

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<sup>313</sup> Section 57-39.2-04 was also amended by section 1 of House Bill No. 1210, chapter 548.

## CHAPTER 548

### HOUSE BILL NO. 1210

(Representative Richter)

AN ACT to amend and reenact subsection 60 of section 57-39.2-04 and subsection 27 of section 57-40.2-04 of the North Dakota Century Code, relating to qualification and notification requirements for sales and use tax exemptions for certain sales made to a senior citizen organization; to provide an effective date; and to declare an emergency.

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

<sup>314</sup> **SECTION 1. AMENDMENT.** Subsection 60 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

60. a. Gross receipts from sales to a senior citizen organization that provides informational, health, welfare, counseling, and referral services for senior citizens in this state if the senior citizen organization:

a- (1) Is recognized by the internal revenue service as having exempt status under 26 U.S.C.501(c)(3);

b- (2) Is recognized by the secretary of state as a charitable organization; and

e- (3) Either:

(1) (a) Provides services through the aging services division of the department of health and human services; or

(2) (b) ~~Receives grant funds through the department of transportation under the federal transit administration's~~which are used for enhanced mobility of seniors and individuals with disabilities program [49 U.S.C. 5310]; or

(c) Provides services through a contract with the department of health and human services as a program of all-inclusive care for the elderly.

b. The department of health and human services and the department of transportation shall notify the tax commissioner if a senior citizen organization no longer meets the criteria in paragraph 3 of subdivision a.

**SECTION 2. AMENDMENT.** Subsection 27 of section 57-40.2-04 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>314</sup> Section 57-39.2-04 was also amended by section 1 of House Bill No. 1177, chapter 547.

27. a. Gross receipts from sales to a senior citizen organization that provides informational, health, welfare, counseling, and referral services for senior citizens in this state if the senior citizen organization:
- a- (1) Is recognized by the internal revenue service as having exempt status under 26 U.S.C. 501(c)(3);
  - b- (2) Is recognized by the secretary of state as a charitable organization; and
  - e- (3) Either:
    - (1) (a) Provides services through the aging services division of the department of health and human services; or
    - (2) (b) Receives grant funds through the department of transportation under the federal transit administration which are used for enhanced mobility of seniors and individuals with disabilities program [49 U.S.C. 5310]; or
    - (c) Provides services through a contract with the department of health and human services as a program of all-inclusive care for the elderly.
  - b. The department of health and human services and the department of transportation shall notify the tax commissioner if a senior citizen organization no longer meets the criteria in paragraph 3 of subdivision a.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2023.

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

Approved April 21, 2023

Filed April 24, 2023

## CHAPTER 549

### SENATE BILL NO. 2334

(Senators Bekkedahl, Sorvaag, Wanzek)  
(Representatives Brandenburg, Kempenich)

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to a large facility development fund; to amend and reenact subsection 2 of section 57-39.2-04.15 and section 57-39.2-26 of the North Dakota Century Code, relating to a sales tax exemption for a fertilizer plant and allocation of sales tax revenue; to provide a continuing appropriation; to provide for a legislative management report; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 57-39.2-04.15 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~On or before June 30, 2023, the~~The owner of the fertilizer or chemical processing plant must receive from the department of environmental quality an air quality permit or a notice that the air quality permit application is complete. The owner shall provide this documentation to the tax commissioner to qualify for the exemption under this section. Denial, expiration, or revocation of a permit terminates the exemption under this section.

**SECTION 2. AMENDMENT.** Section 57-39.2-26 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-39.2-26. Allocation of revenue.**

Except as provided by sections 57-39.2-26.1 ~~and~~, 57-39.2-26.2, ~~57-39.2-26.3, and section 3 of this Act~~, all moneys collected and received under this chapter must be paid into the state treasury and must be credited by the state treasurer to the general fund. Moneys deposited with the commissioner as security for the payment of tax, penalties, or costs due must be deposited and accounted for as provided in subsection 3 of section 57-39.2-12.

**SECTION 3.** A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

#### **Large facility development fund - State treasurer - Continuing appropriation - Report.**

1. There is created in the state treasury the large facility development fund. The fund consists of all moneys transferred to the fund under subsection 2. All moneys in the fund are appropriated to the state treasurer on a continuing basis for the purpose of providing distributions to an eligible county or city.
2. Notwithstanding any other provision of law, after the allocations under sections 57-39.2-26.1, 57-39.2-26.2, and 57-39.2-26.3, a portion of sales, gross receipts, and use tax collections equal to the amount under subsection 3 must

be deposited by the state treasurer in the large facility development fund as needed. The tax commissioner shall calculate the amount needed for distribution under subsection 3 and shall certify to the state treasurer the portion of sales, gross receipts, and use tax net revenues that must be deposited in the fund to provide for the distribution.

3. Within thirty days after construction begins on the large facility, the state treasurer shall distribute to a county or city an amount equal to one percent of up to two billion dollars of estimated cost of tangible property eligible for a tax exemption under section 57-39.2-04.15 used in the construction of the large facility if:
  - a. The county or city is levying a local sales tax for infrastructure, public safety, or economic development; and
  - b. The county in which the large facility is located has a hub city and received at least thirty million dollars of oil and gas gross production tax revenue allocations under section 57-51-15 from September 1, 2021, through August 31, 2022.
4. To qualify for the distribution under subsection 3, the large facility must:
  - a. Be a new fertilizer or chemical processing plant that is eligible for a tax exemption under section 57-39.2-04.15;
  - b. Begin construction after July 1, 2023; and
  - c. Have an estimated total cost of at least one billion dollars.
5. A county or city may receive only one distribution under subsection 3.
6. If the large facility is within city limits, only a city is eligible to receive a distribution under subsection 3.
7. The owner of the large facility shall provide information and documentation to the tax commissioner to determine the estimated cost of the tangible property and the estimated total cost of the large facility for calculations under this section.
8. If a county or city receives a distribution from the fund, the county or city shall provide at least one report to the legislative management on the use of the funding. The report must include the amount of funding received and spent by the county or city, including an itemized list of the amounts spent and a description of how the funding was used by the county or city.

**SECTION 4. EXPIRATION DATE.** Sections 2 and 3 of this Act are effective through June 30, 2027, and after that date are ineffective.

Approved April 29, 2023

Filed May 1, 2023

## CHAPTER 550

### HOUSE BILL NO. 1359

(Representatives Nelson, Davis)  
(Senator Weston)

AN ACT to amend and reenact section 57-39.2-26.3 of the North Dakota Century Code, relating to the county aid distribution fund; to provide for application; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 57-39.2-26.3 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-39.2-26.3. County aid distribution fund - State treasurer - Continuing appropriation. (Effective through June 30, ~~2023~~2027)**

1. There is created in the state treasury the county aid distribution fund. The fund consists of all moneys transferred to the fund under subsection 2. All moneys in the fund are appropriated to the state treasurer on a continuing basis for the purpose of providing allocations to an eligible county.
2. Notwithstanding any other provision of law, a portion of sales, gross receipts, use, and motor vehicle excise tax collections, equal to one-fourth of one percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in effect when the taxes were collected, times the net sales, gross receipts, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-39.5, 57-39.6, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the county aid distribution fund. The tax commissioner shall certify to the state treasurer the portion of sales, gross receipts, use, and motor vehicle excise tax net revenues that must be deposited in the county aid distribution fund as determined under this subsection.
3. At least quarterly, the state treasurer shall allocate the moneys in the fund to the county with the lowest ratio of taxable property values per capita and a population of more than ten thousand.
4. The county treasurer shall deposit all revenues received under this section in the county general fund.
5. For purposes of determining taxable property values under this section, the state treasurer shall use the most recent data published by the tax commissioner in the tax levy report.
6. For purposes of determining the county's population under this section, the state treasurer shall use the most recent actual or estimated census data published by the United States census bureau.

**SECTION 2. APPLICATION.** This Act applies to net sales, gross receipts, use, and motor vehicle excise tax collections received by the tax commissioner after June 30, 2023.

Approved March 30, 2023

Filed April 3, 2023

## CHAPTER 551

### SENATE BILL NO. 2377

(Senators Patten, Kannianen)  
(Representative Headland)

AN ACT to amend and reenact sections 57-39.10-01, 57-39.10-02, 57-39.10-03, and 57-39.10-05 of the North Dakota Century Code, relating to state-tribal agreements for the administration and collection of alcoholic beverages wholesale tax and alcoholic beverages gross receipts tax within the exterior boundaries of a reservation in this state; and to provide for application.

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

**SECTION 1. AMENDMENT.** Section 57-39.10-01 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.10-01. Authority to enter state-tribal alcoholic beverages wholesale tax, tobacco products wholesale tax, and alcoholic beverages gross receipts tax agreements.**

1. The governor, in consultation with the tax commissioner, may enter separate agreements on behalf of the state with the governing body of the Three Affiliated Tribes of the Fort Berthold Reservation, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Standing Rock Sioux Tribe, Spirit Lake Tribe, and Turtle Mountain Band of Chippewa Indians. Each agreement must comply with this chapter relating to the collection, administration, enforcement, and allocation of the state alcoholic beverages wholesale taxes under chapters 5-01, 5-02, and 5-03 for sales of alcoholic beverages, including beer, wine, sparkling wine, and distilled spirits, for delivery to licensed retailers or sale directly to consumers located within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation. The tax commissioner shall conduct a review of any proposed agreement under this chapter to determine if its provisions can be administered and enforced.
2. The governor, in consultation with the tax commissioner, may enter separate agreements on behalf of the state with the governing body of the Three Affiliated Tribes of the Fort Berthold Reservation, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Standing Rock Sioux Tribe, Spirit Lake Tribe, and Turtle Mountain Band of Chippewa Indians. Each agreement must comply with this chapter relating to the collection, administration, enforcement, and allocation of the state tobacco products wholesale taxes under chapter 57-36 for tobacco products sold by licensed wholesalers for delivery to licensed retailers or sold by licensed retailers directly to consumers within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation. The tax commissioner shall conduct a review of any proposed agreement under this chapter to determine if its provisions can be administered and enforced.

3. The governor, in consultation with the tax commissioner, may enter separate agreements on behalf of the state with the governing body of the Three Affiliated Tribes of the Fort Berthold Reservation, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Standing Rock Sioux Tribe, Spirit Lake Tribe, and Turtle Mountain Band of Chippewa Indians. Each agreement must comply with this chapter relating to the collection, administration, enforcement, and allocation of the state alcoholic beverages gross receipts tax under chapter 57-39.6, imposed and collected within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation. The tax commissioner shall conduct a review of any proposed agreement under this chapter to determine if its provisions can be administered and enforced.
4. ~~An agreement under this chapter must include the alcoholic beverages wholesale tax, tobacco products wholesale tax, and the alcoholic beverages gross receipts tax.~~

**SECTION 2. AMENDMENT.** Section 57-39.10-02 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.10-02. Requirements for all state-tribal tax agreements.**

Any agreement entered under this chapter must comply with this section.

1. The agreement must include:
  - a. A statement that the parties to the agreement are not forfeiting any legal rights to apply each party's respective taxes by entering an agreement, except as specifically set forth in the agreement;
  - b. A statement recognizing the sovereign rights of the state and the tribe or tribes; and
  - c. A statement that:
    - (1) The rights of each party must be determined by the terms of the agreement with respect to the taxes subject to the agreement;
    - (2) Neither party may seek additional entitlement or seek to deny entitlement on any federal ground, including federal pre-emption, whether statutorily provided for or otherwise with respect to the taxes that are the subject of an agreement;
    - (3) Both parties shall defend the agreement from attack by third parties;
    - (4) A taxpayer may not be required to pay both the state tax and the tribal tax but shall pay only one tax to one government in an amount established by the agreement; and
    - (5) The state and tribal government shall cooperate to collect only one tax and share or refund the revenue as specified in the agreement.
2. Any tribally owned entity or other entity owned in whole or part by a tribal member, whether chartered under state law or tribal law, and operating within the exterior boundaries of ~~a reservation~~the Fort Berthold Reservation, that

portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation; is subject to the state's tax or taxes and regulatory requirements of the tax subject to an agreement.

3. The tax commissioner retains authority to collect, administer, and enforce the taxes subject to an agreement under this chapter, including the authority to audit, assess, refund, credit, or determine the exempt or nonexempt status of any transaction, for taxes collected within the exterior boundaries of a reservation in this state the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation in the manner provided by the applicable state laws.
4. ~~Any~~The federal district court for the western division of North Dakota is the venue for any controversy or claim between the tribe or tribes and the state, arising out of or relating to an agreement under this chapter, ~~is subject to binding arbitration in accordance with the processes and procedures provided in the agreement between the tribe or tribes and the state. Any issues concerning the jurisdiction of the state to impose a tax are expressly excluded from the scope of the arbitration.~~
5. An agreement under this chapter must give the tax commissioner, after consulting with the governor, and a tribe or tribes the authority to terminate an agreement with or without cause.
6. An agreement may begin no sooner than the first day of a calendar quarter which is at least ninety days after the agreement is signed by both parties. The tribe or tribes and the state must provide the initial population required by ~~sections 57-39.10-03 and section~~ section 57-39.10-04 no fewer than sixty days before the effective date of the agreement.

**SECTION 3. AMENDMENT.** Section 57-39.10-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.10-03. Alcoholic beverages wholesale tax agreement requirements.**

The governor may enter an alcoholic beverages wholesale tax agreement with a tribe or tribes if the agreement complies with section 57-39.10-02 and this section.

1. The taxes subject to an agreement under this section are the state's alcoholic beverages wholesale taxes under chapters 5-01, 5-02, and 5-03, as may be amended subsequently by the legislative assembly, for alcoholic beverages sold by licensed wholesalers, domestic wineries, domestic distilleries, microbrew pubs, brewer taproom licensees, and direct shippers, for delivery to licensed retailers or sale directly to consumers located within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation.
2. A tribe or tribes shall impose taxes equal to the state's alcoholic beverages wholesale taxes on all sales of alcoholic beverages sold by licensed wholesalers, domestic wineries, domestic distilleries, microbrew pubs, brewer taproom licensees, and direct shippers, for delivery to all persons within the exterior boundaries of the reservation in this state Fort Berthold Reservation,

that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation.

3. Chapters A tribe or tribes shall adopt ordinances in conformity with chapters 5-01, 5-02, and 5-03, and title 81 of the North Dakota Administrative Code governing the collection and administration by the tax commissioner of the taxes subject to an agreement under this section.
4. The amount of tax revenue allocated to the tribe collected from taxable transactions and activities within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation, pursuant to an agreement under this section must be equal to an amount determined by multiplying the enrolled membership of the tribe by the state alcohol revenue per capita. The state alcohol revenue per capita is the quarterly collections of the state's alcoholic beverages wholesale taxes designated for deposit in the state general fund divided by the state's total population as determined in the most recent actual or estimated census data published by the United States census bureau allocated eighty percent to the tribe and twenty percent to the state.
5. Except as provided in subsection 6 of section 57-39.10-02, the enrolled membership of the tribe must be certified to the state by September thirtieth of each year during the term of the agreement. The enrolled membership of the tribe must consist of the number of enrolled members of the tribe physically residing within the exterior boundaries of the portion of the tribe's reservation located in this state. The enrolled membership of the tribe must be based on the tribe's enrollment office records, the bureau of Indian affairs enrollment records, or other records maintained by the tribe. The previous year's certified enrollment number must be used if the tribe does not issue a certification by September thirtieth, unless the tribe demonstrates the certified enrollment number has increased or decreased. The manner in which the state and tribe resolve issues arising under this subsection must be specified in the agreement.

**SECTION 4. AMENDMENT.** Section 57-39.10-05 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.10-05. Alcoholic beverages gross receipts tax agreement requirements.**

The governor may enter an alcoholic beverages gross receipts tax agreement with a tribe or tribes if the agreement complies with the requirements of section 57-39.10-02 and this section.

1. The taxes subject to an agreement under this chapter are the state's alcoholic beverages gross receipts tax under chapter 57-39.6, as may be amended subsequently by the legislative assembly, for taxable transactions and activities occurring exclusively within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation.

2. A tribe or tribes shall impose a tax equal to the state's alcoholic beverages gross receipts tax on all sales at retail of alcoholic beverages within the exterior boundaries of the reservation in this state Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation.
3. ~~Chapters~~ A tribe or tribes shall adopt ordinances in conformity with chapters 57-39.2 and 57-39.6, and title 81 of the North Dakota Administrative Code governing the administration and collection of the taxes by the tax commissioner subject to an agreement under this section.
4. The governor and the tribe or tribes must agree the tribe or tribes may not impose any direct or indirect tribal tax or fee on retailers, transactions, or activities subject to the tax agreement. This subsection does not apply to tribal business and alcohol license fees or tribal employment rights office fees.
5. ~~The amount of tax revenue allocated to the tribe collected from taxable transactions and activities within the exterior boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation, pursuant to an agreement under this section must be equal to an amount determined by multiplying the enrolled membership of the tribe by the state alcoholic beverages gross receipts tax revenue per capita. The state alcoholic beverages gross receipts tax revenue per capita is the quarterly collections of the state's alcoholic beverages gross receipts tax designated for deposit in the state general fund divided by the state's total population as determined in the most recent actual or estimated census data published by the United States census bureau allocated eighty percent to the tribe and twenty percent to the state.~~
6. ~~Except as provided in subsection 6 of section 57-39.10-02, the enrolled membership of the tribe must be certified to the state by September thirtieth of each year during the term of the agreement. The enrolled membership of the tribe must consist of the number of enrolled members of the tribe physically residing within the exterior boundaries of the portion of the tribe's reservation located in this state. The enrolled membership of the tribe must be based on the tribe's enrollment office records, the bureau of Indian affairs enrollment records, or other records maintained by the tribe. The previous year's certified enrollment number must be used if the tribe does not issue a certification by September thirtieth, unless the tribe demonstrates the certified enrollment number has increased or decreased. The manner in which the state and tribe resolve issues arising under this subsection must be specified in the agreement.~~
7. a. Notwithstanding any other provision of state law, the agreement must contain provisions in which:
  - (1) Except as otherwise provided by law, the tax commissioner shall maintain the confidentiality of tax information relating to and gathered under the terms of an agreement as provided in section 57-39.2-23;
  - (2) The tribe or tribes may receive a list of retailers located within the exterior boundaries of the reservation Fort Berthold Reservation, that

portion of the Lake Traverse Reservation located in this state, the Spirit Lake Reservation, that portion of the Standing Rock Reservation located in this state, or the Turtle Mountain Reservation and the amount of tax collected from each retailer during a reporting period; and

- (3) The tribe or tribes agree to protect the confidentiality of tax information received from the tax commissioner.
  - b. The agreement must specify the processes or procedures necessary to safeguard the confidential nature of the tax information.
- ~~8-7.~~ Alcoholic beverages gross receipts taxes imposed under chapters 11-09.1 and 40-05.1 are not subject to ~~allocation~~ under an agreement entered under this chapter.

**SECTION 5. APPLICATION.** This Act applies to agreements entered on or after the effective date of this Act.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 552

### SENATE BILL NO. 2141

(Senators Dwyer, Wanzek, Weber)  
(Representatives D. Johnson, J. Olson, Thomas)

AN ACT to amend and reenact subsection 5 of section 57-40.3-01 of the North Dakota Century Code, relating to the definition of purchase price for motor vehicle excise tax purposes; and to provide an effective date.

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

**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. 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 and any charges or fees for auction services. 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 plus the amount of the purchaser's deductible at the time of the loss. 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 and the amount of the purchaser's deductible at the time of 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 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, 2023.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 553

### HOUSE BILL NO. 1223

(Representatives Vigesaa, Bosch, Headland, Mitskog, D. Ruby)  
(Senators Bekkedahl, Kannianen, Patten, Sorvaag)

AN ACT to amend and reenact subsection 15 of section 57-40.3-04 of the North Dakota Century Code, relating to a motor vehicle excise tax exemption for enrolled tribal members; and to provide an effective date.

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

<sup>315</sup> **SECTION 1. AMENDMENT.** Subsection 15 of section 57-40.3-04 of the North Dakota Century Code is amended and reenacted as follows:

15. A motor vehicle acquired at any location within this state by an individual who residesis an enrolled member of a federally recognized Indian tribe residing within the boundaries of any reservation in this state and who is an enrolled member of a federally recognized Indian tribe, provided the exemption in this subsection does not apply to a motor vehicle purchased by an individual whose primary residence is not within the boundaries of any reservation in this state.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2023.

Approved April 11, 2023

Filed April 12, 2023

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<sup>315</sup> Section 57-40.3-04 was also amended by section 4 of House Bill No. 1212, chapter 532.

## CHAPTER 554

### HOUSE BILL NO. 1242

(Representatives Bosch, Heinert, Nathe, Porter)  
(Senators Axtman, Davison, Larson)

AN ACT to amend and reenact subsection 2 of section 57-40.6-02 of the North Dakota Century Code, relating to the statewide interoperable radio network; to repeal section 6 of chapter 293 of the 2019 Session Laws, relating to a line of credit authorized for the statewide interoperable radio network project; to provide an appropriation; to provide for a transfer; to provide for a legislative management study; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 57-40.6-02 of the North Dakota Century Code is amended and reenacted as follows:

2. A political subdivision shall add a fee of fifty cents to the fee imposed on assessed communications services established under subsection 1. The additional fifty cents per communication connection must be remitted to the state treasurer for deposit in the statewide interoperable radio network fund in accordance with section 37-17.3-12 for implementing ongoing administrative and operational maintenance costs of the statewide interoperable radio network. The funds collected under this subsection must be expended in a manner consistent with the recommendations of the statewide interoperability executive committee.

**SECTION 2. TRANSFER - BANK OF NORTH DAKOTA PROFITS TO STATEWIDE INTEROPERABLE RADIO NETWORK FUND.** The Bank of North Dakota shall transfer the sum of \$20,000,000, or so much of the sum as may be necessary, from the Bank's current earnings and undivided profits to the statewide interoperable radio network fund during the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 3. APPROPRIATION - INFORMATION TECHNOLOGY DEPARTMENT - LINE OF CREDIT REPAYMENT - STATEWIDE INTEROPERABLE RADIO NETWORK FUND - ONE-TIME FUNDING.** There is appropriated out of any moneys in the statewide interoperable radio network fund in the state treasury, not otherwise appropriated, the sum of \$20,000,000, or so much of the sum as may be necessary, to the information technology department for the purpose of repaying the Bank of North Dakota line of credit authorized in section 6 of chapter 293 of the 2019 Session Laws, for the biennium beginning July 1, 2023, and ending June 30, 2025. This funding is considered a one-time funding item.

**SECTION 4. APPROPRIATION - INFORMATION TECHNOLOGY DEPARTMENT - STATEWIDE INTEROPERABLE RADIO NETWORK PROJECT - FEDERAL STATE FISCAL RECOVERY FUND - ONE-TIME FUNDING.** There is appropriated from federal funds derived from the state fiscal recovery fund, not otherwise appropriated, the sum of \$80,000,000, or so much of the sum as may be necessary, to the information technology department for the purpose of the statewide

interoperable radio network project, for the biennium beginning July 1, 2023, and ending June 30, 2025. This funding is considered a one-time funding item.

**SECTION 5. LEGISLATIVE MANAGEMENT STUDY - EMERGENCY AND INTEROPERABLE PUBLIC SAFETY COMMUNICATIONS SYSTEM GOVERNANCE.** During the 2023-24 interim, the legislative management shall consider studying emergency and interoperable public safety communications system governance needs and options. The study must:

1. Include an analysis of options to manage and operate state and local emergency and interoperable public safety systems, including the statewide interoperable radio network;
2. Evaluate the current and most appropriate governance roles for each state and local emergency and interoperable public safety government entity;
3. Determine the most appropriate state or local emergency and interoperable public safety government entity to have responsibility for the ongoing administrative and operational maintenance cost of the statewide interoperable radio network; and
4. Consider input from the information technology department, department of emergency services division of state radio, statewide interoperability executive committee, emergency services communications coordinating committee, North Dakota association of counties, and local public safety entities.

The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 6. REPEAL.** Section 6 of chapter 293 of the 2019 Session Laws is repealed.

**SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 13, 2023

Filed April 14, 2023

## CHAPTER 555

### SENATE BILL NO. 2162

(Senators Patten, Beard, Kannianen, Kessel)  
(Representatives Headland, Nathe)

AN ACT to amend and reenact subdivision a of subsection 4 of section 57-51-15 and paragraph 1 of subdivision b of subsection 5 of section 57-51-15 of the North Dakota Century Code, relating to oil and gas gross production tax allocations to counties.

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

<sup>316</sup> **SECTION 1. AMENDMENT.** Subdivision a of subsection 4 of section 57-51-15 of the North Dakota Century Code is amended and reenacted as follows:

- a. Forty-five percent must be distributed to the county treasurer and credited to the county general fund. ~~However, the distribution to a county under this subdivision must be credited to the state general fund if in a taxable year after 2012 the county is not levying 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.~~

<sup>317</sup> **SECTION 2. AMENDMENT.** Paragraph 1 of subdivision b of subsection 5 of section 57-51-15 of the North Dakota Century Code is amended and reenacted as follows:

- (1) Sixty percent must be distributed to the county treasurer and credited to the county general fund. ~~However, the distribution to a county under this subdivision must be credited to the state general fund if in a taxable year after 2012 the county is not levying 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.~~

Approved March 20, 2023

Filed March 21, 2023

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<sup>316</sup> Section 57-51-15 was also amended by section 1 of Senate Bill No. 2059, chapter 556, and section 2 of Senate Bill No. 2162, chapter 555.

<sup>317</sup> Section 57-51-15 was also amended by section 1 of Senate Bill No. 2059, chapter 556, and section 1 of Senate Bill No. 2162, chapter 555.

## CHAPTER 556

### SENATE BILL NO. 2059

(Energy and Natural Resources Committee)  
(At the request of the Department of Mineral Resources)

AN ACT to amend and reenact subdivision b of subsection 1 of section 57-51-15 of the North Dakota Century Code, relating to the balance in the abandoned oil and gas well plugging and site reclamation fund; and to provide an expiration date.

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

<sup>318</sup> **SECTION 1. AMENDMENT.** Subdivision b of subsection 1 of section 57-51-15 of the North Dakota Century Code is amended and reenacted as follows:

- b. Four percent of the amount available under this subsection to the abandoned oil and gas well plugging and site reclamation fund, but not in an amount exceeding seven million five hundred thousand dollars per fiscal year and not in an amount that would bring the balance in the fund to more than forty one hundred million dollars.

**SECTION 2. EXPIRATION DATE.** This Act is effective through June 30, 2027, and after that date is ineffective.

Approved March 14, 2023

Filed March 15, 2023

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<sup>318</sup> Section 57-51-15 was also amended by section 1 of Senate Bill No. 2162, chapter 555, and section 2 of Senate Bill No. 2162, chapter 555.

## CHAPTER 557

### HOUSE BILL NO. 1286

(Representatives Headland, D. Anderson, Bosch, Lefor, Nathe, Porter, Vigesaa)  
(Senators Bekkedahl, Hogue, Kessel, Patten, Rummel)

AN ACT to amend and reenact section 57-51.1-02 of the North Dakota Century Code, relating to the removal of triggered oil extraction tax rate changes for wells located outside the exterior boundaries of a reservation; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-51.1-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-51.1-02. Imposition of oil extraction tax.**

1. There is hereby imposed an excise tax, to be known as the "oil extraction tax", upon the activity in this state of extracting oil from the earth, and every owner, including any royalty owner, of any part of the oil extracted is deemed for the purposes of this chapter to be engaged in the activity of extracting that oil. The rate of tax is five percent of the gross value at the well of the oil extracted. However
2. Subject to subsection 3, for a well located within the exterior boundaries of a reservation, a well located on trust properties outside reservation boundaries as defined in section 57-51.2-02, or a straddle well located on reservation trust land as defined in section 57-51.1-07.10, if the average price of a barrel of crude oil exceeds the trigger price of ninety dollars for each month in any consecutive three-month period, then the rate of tax on oil extracted from all taxable wells is six percent of the gross value at the well of the oil extracted until the average price of a barrel of crude oil is less than the trigger price of ninety dollars for each month in any consecutive three-month period, in which case the rate of tax reverts to five percent of the gross value at the well of the oil extracted. By December thirty-first of each year, the tax commissioner shall determine an indexed trigger price under this section by applying to the current trigger price an adjustment equal to the percentage rate of change of the producer price index for industrial commodities as calculated and published by the United States department of labor, bureau of labor statistics, for the twelve months ending June thirtieth of that year and the indexed trigger price so determined is the trigger price for the following calendar year. For purposes of this section subsection, "average price" of a barrel of crude oil means the monthly average of the daily closing price for a barrel of west Texas intermediate cushing crude oil, as those prices appear in the Wall Street Journal, midwest edition. When computing the monthly average price, the most recent previous daily closing price must be considered the daily closing price for the days on which the market is closed.
3. A tribe may make an irrevocable election to opt-out of the increased rate of tax provided in subsection 2 by providing written notice to the tax commissioner. If a tribe provides notice under this subsection, the rate of tax on oil extracted from taxable wells is equal to the rate of tax provided in subsection 1.

beginning in the month of production after notice under this subsection is received by the tax commissioner.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June 30, 2023.

Approved March 29, 2023

Filed March 30, 2023

## CHAPTER 558

### HOUSE BILL NO. 1427

(Representatives Headland, D. Anderson, Bosch, Dockter)  
(Senators Kannianen, Meyer, Patten)

AN ACT to create and enact a new subsection to section 57-51.1-03 of the North Dakota Century Code, relating to an oil extraction tax rate reduction on production from a restimulation well; to amend and reenact sections 57-51.1-01 and 57-51.1-03.1 of the North Dakota Century Code, relating to the definition and certification of a restimulation well; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 57-51.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-51.1-01. Definitions for oil extraction tax.**

For the purposes of this chapter:

1. "Average daily production" of a well means the qualified maximum total production of oil from the well during a calendar month period divided by the number of calendar days in that period, and "qualified maximum total production" of a well means that the well must have been maintained at the maximum efficient rate of production as defined and determined by rule adopted by the industrial commission in furtherance of its authority under chapter 38-08.
2. "Horizontal well" means a well with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive formation of at least three hundred feet [91.44 meters].
3. "Oil" means petroleum, crude oil, mineral oil, casinghead gasoline, and all liquid hydrocarbons that are recovered from gas on the lease incidental to the production of the gas.
4. "Property" means the right which arises from a lease or fee interest, as a whole or any designated portion thereof, to produce oil. A producer shall treat as a separate property each separate and distinct producing reservoir subject to the same right to produce crude oil; provided, that such reservoir is recognized by the industrial commission as a producing formation that is separate and distinct from, and not in communication with, any other producing formation.
5. "Qualifying secondary recovery project" means a project employing water flooding. To be eligible for the tax exemption provided under section 57-51.1-03, a secondary recovery project must be certified as qualifying by the industrial commission and the project operator must have obtained incremental production as defined in subsection 3 of section 57-51.1-03.

6. "Qualifying tertiary recovery project" means a project for enhancing recovery of oil which meets the requirements of section 4993(c), Internal Revenue Code of 1954, as amended through December 31, 1986, and includes the following methods for recovery:
- a. Miscible fluid displacement.
  - b. Steam drive injection.
  - c. Microemulsion.
  - d. In situ combustion.
  - e. Polymer augmented water flooding.
  - f. Cyclic steam injection.
  - g. Alkaline flooding.
  - h. Carbonated water flooding.
  - i. Immiscible carbon dioxide displacement.
  - j. New tertiary recovery methods certified by the industrial commission.

It does not include water flooding, unless the water flooding is used as an element of one of the qualifying tertiary recovery techniques described in this subsection, or immiscible natural gas injection. To be eligible for the tax exemption provided under section 57-51.1-03, a tertiary recovery project must be certified as qualifying by the industrial commission, the project operator must continue to operate the unit as a qualifying tertiary recovery project, and the project operator must have obtained incremental production as defined in subsection 3 of section 57-51.1-03.

7. "Restimulation well" means a previously completed oil or gas well that, following completion and production of oil, has been treated with an application of fluid under pressure for the purpose of initiating or propagating fractures in a target geologic formation to enhance production of oil. The term does not include a well that:
- a. Has less than sixty months of production or is producing more than one hundred and twenty-five barrels of oil per day reported to the industrial commission before completion of the restimulation treatment;
  - b. Is part of a qualifying secondary recovery project, qualifying tertiary recovery project, or stripper well or stripper well property as defined under this section; or
  - c. Is drilled but not completed and does not have a record of oil production reported to the industrial commission.
8. "Royalty owner" means an owner of what is commonly known as the royalty interest and shall not include the owner of any overriding royalty or other payment carved out of the working interest.

- 8-9. "Stripper well" means a well drilled and completed, or re-entered and recompleted as a horizontal well, after June 30, 2013, whose average daily production of oil during any preceding consecutive twelve-month period, excluding condensate recovered in nonassociated production, per well did not exceed ten barrels per day for wells of a depth of six thousand feet [1828.80 meters] or less, fifteen barrels per day for wells of a depth of more than six thousand feet [1828.80 meters] but not more than ten thousand feet [3048 meters], and thirty barrels per day for wells of a depth of more than ten thousand feet [3048 meters] outside the Bakken and Three Forks formations, and thirty-five barrels per day for wells of a depth of more than ten thousand feet [3048 meters] in the Bakken or Three Forks formation.
- 9-10. "Stripper well property" means wells drilled and completed, or a well re-entered and recompleted as a horizontal well, before July 1, 2013, on a "property" whose average daily production of oil, excluding condensate recovered in nonassociated production, per well did not exceed ten barrels per day for wells of a depth of six thousand feet [1828.80 meters] or less, fifteen barrels per day for wells of a depth of more than six thousand feet [1828.80 meters] but not more than ten thousand feet [3048 meters], and thirty barrels per day for wells of a depth of more than ten thousand feet [3048 meters] during any preceding consecutive twelve-month period. Wells which did not actually yield or produce oil during the qualifying twelve-month period, including disposal wells, dry wells, spent wells, and shut-in wells, are not production wells for the purpose of determining whether the stripper well property exemption applies.

**SECTION 2.** A new subsection to section 57-51.1-03 of the North Dakota Century Code is created and enacted as follows:

The production from a restimulation well that has been certified as a qualified well by the industrial commission after August 1, 2023, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter for the first seventy-five thousand barrels of production or for a period of eighteen months after the month in which oil was first produced from the restimulation well, whichever occurs first. The tax rate reduction under this subsection does not apply to a well located within the exterior boundaries of a reservation, a well located on trust properties outside reservation boundaries as defined in section 57-51.2-02, or a straddle well located on reservation trust land as defined in section 57-51.1-07.10, unless a tribe makes an irrevocable election to opt-in to the tax rate reduction by providing written notice to the tax commissioner. If a tribe provides notice of its election to opt-in to the tax rate reduction, the tax commissioner shall apply the tax rate reduction beginning in the month of production after the notice is received by the tax commissioner. The industrial commission shall certify whether the well qualifies as a restimulation well under section 1 of this Act in a manner that conforms to the practice and procedure used by the commission at the time the restimulation well is certified.

**SECTION 3. AMENDMENT.** Section 57-51.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-51.1-03.1. Stripper well, new well, and secondary or tertiary project, and restimulation well certification for tax exemption or rate reduction - Filing requirement.**

1. To receive the benefits of a tax exemption or tax rate reduction, a certification of qualifying well status prepared by the industrial commission must be submitted to the tax commissioner as follows:
  - a. To receive, from the first day of eligibility, a tax exemption on production from a stripper well property or individual stripper well under subsection 2 of section 57-51.1-03, the industrial commission's certification must be submitted to the tax commissioner within eighteen months after the end of the stripper well property's or stripper well's qualification period.
  - b. To receive, from the first day of eligibility, a tax exemption under subsection 3 of section 57-51.1-03 on production from a secondary or tertiary project, the industrial commission's certification must be submitted to the tax commissioner within eighteen months after the month in which the first incremental oil was produced.
  - c. To receive, from the first day of eligibility, a tax exemption or the reduction on production for which any other tax exemption or rate reduction may apply, the industrial commission's certification must be submitted to the tax commissioner within eighteen months of the completion, recompletion, or other qualifying date.
  - d. To receive, from the first day of eligibility, a tax rate reduction under section 2 of this Act on production from a restimulation well, the industrial commission's certification must be submitted to the tax commissioner within six months after the month in which the first oil was produced.
2. If the industrial commission's certification is not submitted to the tax commissioner within the eighteen-month period provided in this section, then the exemption or rate reduction does not apply for the production periods in which the certification is not on file with the tax commissioner. When the industrial commission's certification is submitted to the tax commissioner after the eighteen-month period, the tax exemption or rate reduction applies to prospective production periods only and the exemption or rate reduction is effective the first day of the month in which the certification is received by the tax commissioner.

**SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable production beginning after June 30, 2023.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 559

### SENATE BILL NO. 2367

(Senators Hogue, Bekkedahl)  
(Representatives Lefor, Vigesaa)

AN ACT to amend and reenact section 57-51.1-07.5 of the North Dakota Century Code, relating to the allocation of the state share of oil and gas taxes.

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

<sup>319</sup> **SECTION 1. AMENDMENT.** Section 57-51.1-07.5 of the North Dakota Century Code is amended and reenacted as follows:

##### **57-51.1-07.5. State share of oil and gas taxes - Deposits.**

From the revenues designated for deposit in the state general fund under chapters 57-51 and 57-51.1, the state treasurer shall deposit the revenues received each biennium in the following order:

1. The first two hundred thirty million dollars into the state general fund;
2. The next two hundred fifty million dollars into the ~~tax-relief~~social services fund;
3. The next seventy-five million dollars into the budget stabilization fund, but not in an amount that would bring the balance in the fund to more than the limit in section 54-27.2-01;
4. The next two hundred thirty million dollars into the state general fund;
5. The next ten million dollars into the lignite research fund;
6. The next twenty million dollars into the state disaster relief fund, but not in an amount that would bring the unobligated balance in the fund to more than twenty million dollars;
7. The next four hundred million dollars into the strategic investment and improvements fund;
8. The next fifty-nine million seven hundred fifty thousand dollars, or the amount necessary to provide for twice the amount of the distributions under subsection 2 of section 57-51.1-07.7, into the funds designated for infrastructure development in non-oil-producing counties under sections 57-51.1-07.7 and 57-51.1-07.8 with fifty percent deposited into the municipal infrastructure fund and fifty percent deposited into the county and township infrastructure fund;
9. The next one hundred seventy million two hundred fifty thousand dollars or the amount necessary to provide a total of two hundred thirty million dollars into

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<sup>319</sup> Section 57-51.1-07.5 was also amended by section 31 of House Bill No. 1040, chapter 514.

the funds designated for infrastructure development in non-oil-producing counties under sections 57-51.1-07.7 and 57-51.1-07.8 with fifty percent deposited into the municipal infrastructure fund and fifty percent deposited into the county and township infrastructure fund;

10. The next twenty million dollars into the airport infrastructure fund; and
11. Any additional revenues into the strategic investment and improvements fund.

Approved April 13, 2023

Filed April 14, 2023

# TOWNSHIPS

## CHAPTER 560

### HOUSE BILL NO. 1236

(Representatives Dockter, D. Anderson, Hagert, Weisz)  
(Senators Elkin, Weber)

AN ACT to amend and reenact sections 58-04-01, 58-05.1-07, 58-06-02, 58-07-01, and 58-08-01 of the North Dakota Century Code, relating to township officials.

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

**SECTION 1. AMENDMENT.** Section 58-04-01 of the North Dakota Century Code is amended and reenacted as follows:

**58-04-01. Annual township meeting - When held - Change in meeting place - Notice.**

The electors of each township annually shall assemble and hold a township meeting ~~on the third Tuesday in the month of March at such~~ the place in the township or in an adjacent township ~~as designated by the board of township supervisors thereof shall designate.~~ Notice of the time and place of holding the meeting must be given by the township clerk at least ten days ~~prior to before~~ the meeting by publication in a legal newspaper published in the township or, if there is no such newspaper, then in the county's official newspaper. Before a change in the place of holding the annual township meeting is made, notice of the contemplated change may be given by any member of the board of township supervisors to the township clerk, who shall have such change published if time allows. Otherwise, the township clerk shall post notice of the change. ~~Where~~ if an incorporated city is wholly or partially within the boundaries of the township or an adjacent township, all township meetings may be held ~~in such~~ at the place within ~~such an~~ incorporated city, ~~as~~ designated by the board of township supervisors thereof may designate.

**SECTION 2. AMENDMENT.** Section 58-05.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**58-05.1-07. Multitownship board - Election.**

~~On the third Tuesday of March following~~ Following the annual township meeting under section 58-04-01 and the consolidation election, a multitownship meeting must be held and the qualified electors shall elect a multitownship board of supervisors. If the number of consolidated townships is five or fewer, the multitownship board of supervisors must consist of one supervisor elected from each township. If the number of consolidated townships is two or four, an additional township supervisor must be elected at large so the multitownship board consists of three or five members. The length of the terms of the supervisors first elected must be staggered so that the terms of an equal amount of supervisors, or as nearly as practicable, expire each year. In addition, the qualified electors shall elect a multitownship clerk and a multitownship treasurer. The multitownship officers elected at the annual meeting

shall assume all the powers and duties of the township officers of the townships approving the consolidation.

**SECTION 3. AMENDMENT.** Section 58-06-02 of the North Dakota Century Code is amended and reenacted as follows:

**58-06-02. Compensation of supervisors.**

A township supervisor ~~is entitled to~~may receive as compensation for services up to ~~sixtyone hundred~~ sixtyone hundred dollars a day for each day necessarily devoted to the work of a supervisor's office not exceeding ~~twofour~~ twofour thousand dollars in a calendar year. The electors of the township shall establish the daily compensation rate for township supervisors at each annual township meeting. Additional compensation over ~~twofour~~ twofour thousand dollars may be provided for reimbursement of expenses as provided in section 44-08-04 and for mileage as provided in section 54-06-09 for each mile [1.61 kilometers] necessarily traveled in the performance of a supervisor's duties.

**SECTION 4. AMENDMENT.** Section 58-07-01 of the North Dakota Century Code is amended and reenacted as follows:

**58-07-01. Compensation of clerk.**

The township clerk ~~is entitled to~~may receive as compensation for services up to ~~sixtyone hundred~~ sixtyone hundred dollars a day for each day necessarily devoted to the work of the clerk's office not exceeding ~~twofour~~ twofour thousand dollars in a calendar year. The electors of the township shall establish the daily compensation rate for the township clerk at each annual township meeting. Additional compensation over ~~twofour~~ twofour thousand dollars may be provided for reimbursement of expenses as provided in section 44-08-04 and for mileage as provided in section 54-06-09 for each mile [1.61 kilometers] necessarily traveled in the performance of the clerk's duties. In those townships in which the offices of township clerk and treasurer have been merged, the individual elected to fill the new office is entitled to receive compensation as township clerk only.

**SECTION 5. AMENDMENT.** Section 58-08-01 of the North Dakota Century Code is amended and reenacted as follows:

**58-08-01. Compensation of treasurer.**

The township treasurer ~~is entitled to~~may receive as compensation for services up to ~~sixtyone hundred~~ sixtyone hundred dollars a day for each day necessarily devoted to the work of the treasurer's office not exceeding ~~twofour~~ twofour thousand dollars in a calendar year. The electors of the township shall establish the daily compensation rate for the township treasurer at each annual township meeting. Additional compensation over ~~twofour~~ twofour thousand dollars may be provided for reimbursement of expenses as provided in section 44-08-04 and for mileage as provided in section 54-06-09 for each mile [1.61 kilometers] necessarily traveled in the performance of the treasurer's duties. The township treasurer may not be allowed a percentage on the balance turned over to the treasurer's successor in office.

Approved March 23, 2023

Filed March 23, 2023

# TRUSTS

## CHAPTER 561

### SENATE BILL NO. 2210

(Senator Klein)

AN ACT to amend and reenact section 59-09-02 of the North Dakota Century Code, relating to individual retirement and employee benefit trusts.

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

**SECTION 1. AMENDMENT.** Section 59-09-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **59-09-02. (102) Scope.**

1. Except as provided in subsection 2, chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 apply to express trusts, whether charitable or noncharitable and testamentary or inter vivos, and to trusts created pursuant to a statute or a judgment or decree that requires the trust to be administered in the manner of an express trust.
2. Chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 do not apply to:
  - a. ~~A trust that is part of an employee benefit arrangement or an individual retirement account.~~
  - b. A trust account established under a qualified tuition savings program pursuant to section 6-09-38.
  - e-b. Trust accounts maintained on behalf of clients or customers by licensed service professionals, including trust accounts maintained by attorneys pursuant to the North Dakota Rules of Professional Conduct and by real estate brokers pursuant to chapter 43-23.
  - d-c. An endowment care fund established by a cemetery authority pursuant to chapter 23-21.
  - e-d. Funds maintained by public bodies as defined by chapter 1-07 or other governmental unit entities.
  - f-e. Trust funds held for a single business transaction or an escrow arrangement.
  - g-f. Trusts created by a depository agreement with a financial institution.
  - h-g. An account maintained under the North Dakota Uniform Transfers to Minors Act as contained in chapter 47-24.1.

- i-h. A fund maintained pursuant to court order in conjunction with a bankruptcy proceeding or a business liquidation.
- j-i. A voting trust described in chapter 10-19.1.
- k-j. Funds maintained to manage proceeds from class actions.
- l-k. A trust created solely to secure the performance of an obligation.
- m-l. A trust created on behalf of a resident of a residential facility.
- n-m. A trust managed by a nonprofit association for disabled individuals under 42 U.S.C. 1396p(d)(4), as in effect on the effective date of chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 and under the rules adopted by the department of health and human services.
- o-n. A resulting or constructive trust.

Approved March 29, 2023

Filed March 30, 2023

# WATERS

## CHAPTER 562

### HOUSE BILL NO. 1385

(Representatives Nelson, Davis, Fegley, Finley-DeVille, D. Johnson)  
(Senators Dwyer, Kannianen, Schaible, Sorvaag)

AN ACT to amend and reenact sections 61-02-24 and 61-02-24.1 of the North Dakota Century Code, relating to tribal contracts with the state water commission.

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

**SECTION 1. AMENDMENT.** Section 61-02-24 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-24. Cooperation and coordination with ~~all existing agencies~~entities.**

1. The commission may investigate, plan, cooperate, and make all contracts or compacts necessary or requisite:
  4. a. With the United States and any department, agency, or officer thereof.
  - 2- b. With the states of Minnesota, South Dakota, Montana, and Wyoming, or any political subdivision thereof, and with any other state, and with any department or officer or political subdivision of any state.
  - 3- c. With Canada or any of its provinces, and with any agency, department, or officer of Canada or any of its provinces.
  - d. With federally recognized Indian tribes, or any agency, department, or officer thereof.
2. The powers granted by this section shall extend to all waters, whether considered as intrastate, interstate, or international. The commission is specially authorized and empowered to cooperate with the United States or any of its agencies concerned with investigating, planning, conserving, utilizing, developing, and handling water in any form for purposes of water conservation, flood control, prevention of water pollution, or soil reclamation, or with any other resources of the state, and concerned with the administration of the public works program of the state or any part thereof. The commission is authorized to act and to contract fully with the United States, or with any department, agency, or officer thereof, with full power of purchase, sale, or lease to carry out, develop, or administer any federal project within this state or partly within the state, and also to accept and to use any funds provided by the United States or any agency thereof for any such purposes.

**SECTION 2. AMENDMENT.** Section 61-02-24.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-24.1. Cooperation and participation of political subdivisions and federally recognized Indian tribes.**

AllAny political subdivisions~~subdivision~~, including ~~counties~~a county, ~~township~~township, ~~cities~~city, ~~park districts~~district, and water resource ~~districts~~district, ~~and federally recognized Indian tribes~~, may separately or jointly, with other ~~political subdivisions~~each other, the state of North Dakota through the commission, or federal departments or agencies, investigate, plan, and do all things necessary for participating in or undertaking underground or surface water surveys, development, construction, reconstruction, and maintenance of works, dams, and projects for the beneficial utilization and control of water resources, and may enter into contracts with the commission to pay rents, charges, or other payments for the use of works of the commission.

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 563

### HOUSE BILL NO. 1073

(Energy and Natural Resources Committee)  
(At the request of the Department of Water Resources)

AN ACT to amend and reenact section 61-03-21 of the North Dakota Century Code, relating to the department of water resources authority to require operating plans for dams.

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

**SECTION 1. AMENDMENT.** Section 61-03-21 of the North Dakota Century Code is amended and reenacted as follows:

#### **61-03-21. Plans of operation for reservoirs - Adequate structure.**

~~Every operator of a water storage reservoir operator in North Dakota having a capacity of more than one thousand acre feet [1233481.84 cubic meters] annually shall file with the department, between the first and fifteenth day of February, an operating plan for the reservoir for the calendar year in which the plan is filed. The operator of the reservoir shall cooperate with the department to make all water releases compatible with the best interest of the greatest number of downstream water users and affected landowners. If the department declares an emergency in connection with the operation of the reservoir, the operator promptly shall submit to the department a separate interim operating plan for the reservoir. The interim operating plan must be coordinated and integrated with the suggestions and plans of the department to serve the affected persons during the emergency. The department may require the reservoir operators to maintain adequate structures and operate ~~them~~the structures in a manner to prevent waste, promote the beneficial use of water, and not endanger the general health and welfare of affected persons affected by the reservoirs. If an operator fails to maintain and operate adequate structures, the department shall set a place and time for hearing and serve notice upon the operator to show cause why the operator's water permit should not be canceled. A copy of any order canceling the water right must be filed in the office of the recorder in the county or counties where the land to which the right is appurtenant is located. An appeal may be taken from the decision of the department in accordance with chapter 28-32.~~

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 564

### HOUSE BILL NO. 1077

(Energy and Natural Resources Committee)  
(At the request of the Department of Water Resources)

AN ACT to create and enact a new section to chapter 61-04 of the North Dakota Century Code, relating to water storage contracts.

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

**SECTION 1.** A new section to chapter 61-04 of the North Dakota Century Code is created and enacted as follows:

#### **Water storage contracts.**

A federal agency that enters into discussions with an entity relating to a water storage contract from a reservoir partially or wholly located within the state shall provide the department of water resources with a sixty-day notice once the discussions begin. Communications regarding a water storage contract must be copied to the department of water resources. The department of water resources must be provided with an executed copy of a water storage contract.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 565

### HOUSE BILL NO. 1074

(Energy and Natural Resources Committee)  
(At the request of the Department of Water Resources)

AN ACT to amend and reenact section 61-04-01.1, subsection 5 of section 61-04-05, and section 61-04-05.1 of the North Dakota Century Code, relating to informational hearings for water permit applications.

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

**SECTION 1. AMENDMENT.** Section 61-04-01.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **61-04-01.1. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Adjudicative proceeding" means an appeal under chapter 28-32 of a recommended decision prepared by the director of the department of water resources for a water permit application.
2. "Assignment" means the change of a water permit from one permitholder to another permitholder.
3. "Beneficial use" means a use of water for a purpose consistent with the best interests of the people of the state.
4. "Commission" means the state water commission.
5. "Conditional water permit" means a water permit that has not been perfected.
6. "Domestic use" means the use of water by at least one family unit or household obtaining water from the same system for personal needs and for household purposes, including heating, drinking, washing, sanitary, and culinary uses; irrigation of land not exceeding five acres [2.0 hectares] in area for each family unit or household 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.
7. "Fish, wildlife, and other recreational uses" means the use of water for the purposes of propagating and sustaining fish and wildlife resources and for the development and maintenance of water areas necessary for outdoor recreation activities.
8. "Fossil byproduct water" means water obtained as a byproduct of extraction and separation from oil, gas, and other hydrocarbons, from a formation that is both not a potable aquifer at the extraction location and is situated below the deepest potable aquifer by the practically impermeable layer.

9. "Industrial use" means the use of water for the furtherance of a commercial enterprise wherever located, including manufacturing, mining, or processing.
10. ~~"Informational hearing" means an administrative proceeding, not an adjudicative proceeding, which provides all interested persons an opportunity to present oral or written comments on a water permit application.~~
11. "Irrigation use" means the use of water for application to more than 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.
- 12.11. "Livestock use" means the use of water for drinking purposes by herds, flocks, or bands of animals kept for commercial purposes.
- 13.12. "Municipal or public use" means the use of water by the state through its political subdivisions, institutions, facilities, and properties, and the inhabitants thereof, or by unincorporated communities, subdivision developments, rural water systems, and other entities, whether supplied by the government or by a privately owned public utility or other agency or entity, for primarily domestic purposes, as defined herein.
- 14.13. "Party of record" means a person who filed written comments by the date specified under subsection 5 of section 61-04-05.
- 15.14. "Perfected water permit" means a water permit where the water appropriated under a conditional water permit has been applied to a beneficial use and the department of water resources has inspected the works to verify all conditions have been met.
- 16.15. "Permitholder" means the name of the entity holding a water permit.
- 17.16. "Point of diversion" means the tract of land where the waters of the state are withdrawn or diverted.
- 18.17. "Priority date" means the date assigned to an application or water right.
18. "Public hearing" means an administrative proceeding, not an adjudicative proceeding, which provides all interested persons an opportunity to present oral or written comments on a water permit application.
19. "Rural water system" means a water supply system designed to serve regional needs.
20. "Water of the state" or "waters of the state" means those waters identified in section 61-01-01.
21. "Water right" means the right established under this title to appropriate or store waters of the state.

**SECTION 2. AMENDMENT.** Subsection 5 of section 61-04-05 of the North Dakota Century Code is amended and reenacted as follows:

5. The notice must give all essential facts as to the proposed appropriation, including the places of appropriation and of use, amount of water, the use, the name and address of the applicant, and the date by which written comments and requests for ~~an informational~~ a public hearing regarding the proposed appropriation must be filed with the department of water resources. The notice also must state anyone who files written comments with the department will be mailed the department's recommended decision on the application. Persons filing written comments will become a party of record to the application. The comment deadline is five p.m. on the first business day thirty days after the first published notice in the official county newspaper as specified in subsection 4.

**SECTION 3. AMENDMENT.** Section 61-04-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-05.1. Comments - Hearing.**

1. Comments regarding a proposed appropriation must be in writing and filed by the date specified by the department of water resources under subsection 5 of section 61-04-05. The comments must state the name and mailing address of the person filing the comments. Comment letters submitted electronically must state the name and mailing address of the person filing the comments, and must be signed by the submitter to be considered valid and part of the official record.
2. A person filing written comments also may request ~~an informational~~ a public hearing ~~on the application for the department to obtain additional information to evaluate the application or to receive public input~~ by the date specified by the department of water resources under subsection 5 of section 61-04-05. If a request for ~~an informational~~ a public hearing is made and the department determines ~~an informational~~ a public hearing is necessary ~~to obtain additional information to evaluate the application or to receive public input~~, the department shall designate a time and place for the ~~informational~~public hearing and serve a notice of hearing upon the applicant and any person who filed written comments. Service must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing.
3. If two or more municipal or public use permitholders request the ~~informational~~public hearing to be held locally, the department of water resources shall hold the hearing in the county seat of the county in which the proposed water appropriation site is located.
4. The department of water resources shall consider all written comments received and testimony presented at ~~an informational~~ a public hearing, if held, and shall make a recommended decision in writing. The recommended decision must be mailed to the applicant and any party of record and may constitute:
  - a. Approval of all or a portion of the application, with the remainder held in abeyance or denied;
  - b. Denial of the application; or
  - c. Deferral of the application.

5. Within thirty days of service of the recommended decision, the applicant and any party of record who would be aggrieved by the decision may file additional written comments with the department of water resources or request an adjudicative proceeding on the application, or both. A request for an adjudicative proceeding must be made in writing and must state with particularity how the person would be aggrieved by the decision and the issues and facts to be presented at the proceeding. If a request for an adjudicative proceeding is not made, the department shall consider the additional comments, if any are submitted, and issue a final decision. If a request for an adjudicative proceeding is made and the department determines an adjudicative proceeding is necessary, the department shall designate a time and place for the adjudicative proceeding and serve the notice of adjudicative proceeding upon the applicant and any person who filed written comments. Service must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 566

### HOUSE BILL NO. 1075

(Energy and Natural Resources Committee)  
(At the request of the Department of Water Resources)

AN ACT to create and enact section 61-04-24.1 of the North Dakota Century Code, relating to comments on the cancellation of water rights; and to amend and reenact sections 61-04-24 and 61-04-25 of the North Dakota Century Code, relating to the notice and hearing process for the cancellation of water rights.

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

**SECTION 1. AMENDMENT.** Section 61-04-24 of the North Dakota Century Code is amended and reenacted as follows:

##### **61-04-24. Cancellation of water rights - Notice - Contents.**

1. If it appears any water appropriation or portion of an appropriation has not been used for a beneficial use, or having been so used at one time has ceased to be used for that purpose for more than three successive years, unless the failure or cessation of use is due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the department of water resources shall set a place and time for a hearing. ~~For purposes of this chapter, an incorporated municipality or a rural water system has good and sufficient cause excusing the failure to use a water permit, if the water permit reasonably may be necessary for the future water requirements of the municipality or the rural water system. Any permitholder using water from a common source of supply, any applicant for a permit to use water from a common source of supply, or any interested party may request the department of water resources to conduct a hearing to cancel any unused water rights to the common source of supply. Any decision of the department in denying a request for a hearing may be appealed in accordance with chapter 28-32. Prior to the hearings, the department shall serve notice upon the permitholder and upon the owners of land benefited by the appropriation or works, except where the lands benefited are within the geographical boundaries of a city, in which case notice must be given to the governing body of the city, to show cause by a time and at a place why the water appropriation or a portion of the appropriation should not be canceled.~~ give notice of cancellation by certified mail to the permitholder and to the owners of land benefited by the appropriation as indicated on the water permit.
2. ~~In addition to the time and place of hearing, the~~ The notice must contain:
  - a. A description of the water appropriation.
  - b. The permit number ~~upon the records of the commission.~~
  - c. The date of priority.
  - d. ~~The point~~ All points of diversion.

- e. A description of the ~~lands~~ land benefited by the appropriation as indicated on the water permit ~~on file with the commission.~~
  - f. ~~Notice that the permit holder, the owners of land benefited by the appropriation or works, and other interested parties whose right to use water may be affected by a cancellation of the appropriation are to show cause why the appropriation, or a portion of the appropriation, should not be canceled.~~Notification a notice of cancellation will be published in the county newspaper of record indicating when written comments on the cancellation must be submitted to the department for consideration.
3. ~~The notice must be served personally or sent by certified mail at least thirty days before the date of hearing to the permit holder and to the owners of land benefited by the appropriation as indicated on the water permit on file with the commission, or to persons having an interest in works as they appear from the records of the county treasurer or the recorder. In addition, the notice must be published.~~The department shall publish a notice of cancellation in the official newspaper ~~in of~~ the county~~ies~~ in which ~~the~~each point of diversion is located once each week for two consecutive weeks prior to the date of hearing. The notice of cancellation must include the name and address of the permit holder, a description of the water appropriation, the permit number, the priority date, the location of all points of diversion, and a description of all land benefited by the appropriation as indicated on the water permit. The notice must state a person that files written comments with the department will be mailed the department's final decision on cancellation.
  4. The department shall pay the notice of cancellation publication costs.

**SECTION 2.** Section 61-04-24.1 of the North Dakota Century Code is created and enacted as follows:

**61-04-24.1. Cancellation of water rights - Comments.**

Comments regarding the proposed cancellation must be in writing and filed by the date specified by the department. The comments must state the name and mailing address of the person filing the comments. Comment letters submitted electronically must state the name and mailing address of the person filing the comments, and must be signed by the submitter to be considered valid and part of the official record.

**SECTION 3. AMENDMENT.** Section 61-04-25 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-25. Cancellation of water rights - Hearing-- Appeal.**

~~At the hearing the recommended decision of the department of water resources is prima facie evidence for cancellation of the water permit or portion of the permit. If no one appears at the hearing, comments are submitted by the date specified by the department, the water permit or portion of the water permit must be canceled. If interested parties appear and contest the cancellation, the department shall hear the evidence and, if it appears the water has not been put to a beneficial use, or, having been put to a beneficial use at one time, has ceased to be used for the purpose for more than three successive years, unless the failure or cessation of use is due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the permit, or a portion of the permit, must be canceled. For purposes of this chapter, an incorporated municipality or a rural water system has good and sufficient cause excusing the failure to use a water permit, if the water~~

~~permit reasonably may be necessary for the future water requirements of the municipality or the rural water system. If comments are received, the department shall consider all written comments and issue a final decision. The final decision must be mailed to the permitholder, to the owners of land benefited by the appropriation as indicated on the water permit, and any person that submitted written comments by the date specified by the department. If the final decision is to cancel the water permit or any portion of the water permit, the order canceling the water permit or any portion of the water permit must be sent to the permitholder with the final decision. An appeal may be taken from the decision of the department in accordance with chapter 28-32.~~

Approved March 27, 2023

Filed March 28, 2023

## CHAPTER 567

### HOUSE BILL NO. 1072

(Energy and Natural Resources Committee)  
(At the request of the Department of Water Resources)

AN ACT to amend and reenact subsection 1 of section 61-04.1-04, section 61-04.1-06, and subdivision h of subsection 2 of section 61-04.1-16 of North Dakota Century Code, relating to the powers and duties of the department of water resources; and to repeal section 61-04.1-35 of the North Dakota Century Code, relating to the required bond, cash, or negotiable securities required when bids are submitted to the atmospheric resources board.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 61-04.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1. The North Dakota atmospheric resource board is a division of the ~~state water commission~~department of water resources. The board is composed of the director of the state aeronautics commission, a representative of the department of environmental quality, the director of the department of water resources, and one additional board member from each of seven districts established by section 61-04.1-05. The governor shall appoint one board member for each of the seven districts from a list of three candidates given to the governor by weather modification authorities in each district:
  - a. When the term of office of any board member from any district is about to expire.
  - b. When a vacancy has occurred, or is about to occur, in the term of office of a board member from any district for any reason other than expiration of term of office.

**SECTION 2. AMENDMENT.** Section 61-04.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**61-04.1-06. Direction and supervision by ~~state water commission~~department of water resources - Independent functions retained by board.**

The powers, functions, and duties of the board shall be administered under the direction and supervision of the ~~state water commission~~department of water resources. The board shall retain the quasi-judicial, quasi-legislative, advisory, budgetary, rulemaking, and other functions vested in it, which shall be exercised in accordance with policy and guidelines for weather modification activities as established by the ~~commission~~department.

**SECTION 3. AMENDMENT.** Subdivision h of subsection 2 of section 61-04.1-16 of the North Dakota Century Code is amended and reenacted as follows:

- h. The applicant has furnished a bid bond ~~in accordance with section 61-04.1-35~~.

**SECTION 4. REPEAL.** Section 61-04.1-35 of the North Dakota Century Code is repealed.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 568

### SENATE BILL NO. 2097

(Energy and Natural Resources Committee)  
(At the request of the Department of Water Resources)

AN ACT to create and enact a new section to chapter 61-15 of the North Dakota Century Code, relating to wild and scenic river designations.

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

**SECTION 1.** A new section to chapter 61-15 of the North Dakota Century Code is created and enacted as follows:

##### **Wild and scenic rivers.**

1. Before a political subdivision engages in meetings with federal agencies to have any waterbody in the state designated a wild, scenic, or recreational river under the Wild and Scenic Rivers Act [16 U.S.C. 1271, et seq.] the political subdivision must notify the:
  - a. Director of the department of water resources;
  - b. Director of the department of environmental quality;
  - c. Director of the game and fish department;
  - d. Director of the parks and recreation department;
  - e. Water resource board of any water resource district that would be impacted;
  - f. Director of the department of trust lands;
  - g. Director of the department of mineral resources;
  - h. County commission of any county impacted;
  - i. Legislators of any district impacted;
  - j. Grazing associations impacted; and
  - k. Public service commission.
2. Any written communications between the political subdivision and federal agencies regarding such designation must be copied to the list in subsection 1.
3. The county commission shall hold a public hearing regarding the potential designation.

4. The governor and the county commission of any county impacted must express written support before the state or a federal agency designates a wild, scenic, or recreational river under the Wild and Scenic Rivers Act.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 569

### SENATE BILL NO. 2036

(Legislative Management)  
(Water Drainage Committee)

AN ACT to create and enact twelve new sections to chapter 61-16.1 of the North Dakota Century Code, relating to water resource boards; to amend and reenact sections 21-06-07, 61-01-06, 61-05-02.1, 61-16.1-02, 61-16.1-09, 61-16.1-09.1, 61-16.1-15, 61-16.1-17, 61-16.1-18, 61-16.1-19, 61-16.1-20, 61-16.1-21, 61-16.1-22, 61-16.1-23, 61-16.1-24, 61-16.1-26, 61-16.1-27, 61-16.1-28, 61-16.1-42, 61-16.1-43, 61-16.1-51, and 61-16.1-54, and subdivision g of subsection 4 of section 61-32-03.1 of the North Dakota Century Code, relating to water resource boards and procedures for assessment projects undertaken by water resource boards; and to repeal section 61-16.1-01 and chapter 61-21 of the North Dakota Century Code, relating to water resource districts, water resource boards, assessment procedures and requirements, and drains.

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

**SECTION 1. 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, water resource boards, 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. Certificates of deposit, savings deposits, or other deposits 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 deposit placement service as determined by the commissioner of financial institutions.
  - e. State and local securities:
    - (1) Any security that is a general obligation of any state or local government with taxing powers and is rated in the highest three categories by a nationally recognized rating agency.

- (2) An obligation of the state housing finance agency that is rated in the highest two categories by a nationally recognized rating agency.
  - (3) Any security that is a general obligation of a school district and is rated in the highest two categories by a nationally recognized rating agency.
  - (4) Obligations of this state and general obligations of its political subdivisions.
- f. Commercial paper issued by a United States corporation rated in the highest quality category by at least two nationally recognized rating agencies and matures in two hundred seventy days or less.
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.

**SECTION 2. AMENDMENT.** Section 61-01-06 of the North Dakota Century Code is amended and reenacted as follows:

**61-01-06. Watercourse and waterway - DefinitionDefinitions.**

1. A watercourse entitled to the protection of the law is constituted if there is a sufficient natural and accustomed flow of water to form and maintain a distinct and a defined channel. The supply of water is not required to be continuous or from a perennial living source. The criteria for constituting a watercourse are satisfied if the flow arises periodically from natural causes and reaches a plainly defined channel of a permanent character. If requested by a water resource board, the department of water resources shall determine whether a watercourse is constituted.
2. For purposes of this title, unless the context otherwise requires, "waterway" means a natural, geologic feature that conveys surface water over land.

**SECTION 3. AMENDMENT.** Section 61-05-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-05-02.1. Creation and jurisdiction of irrigation district - Limitations.**

Notwithstanding section 61-05-02, an irrigation district may not be created if the primary purpose of the district is to provide drainage benefits to residents of the district. A drainage project proposed, undertaken, approved, or subject to assessment by an irrigation district also is subject to the permit requirements under chapter 61-32. Drainage benefits provided by an irrigation district may not impact the authority of a water resource board to assess for drainage projects under chapter 61-16.1 or 61-24.

**SECTION 4. AMENDMENT.** Section 61-16.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-02. Definitions.**

InFor purposes of this chapter, unless the context or subject matter otherwise providesrequires:

1. "Affected landowners" means landowners whose land is subject to special assessment or condemnation for a project.

2. ~~"Assessment drain" means any natural watercourse opened, or proposed to be opened, and improved for the purpose of drainage, and any artificial drain of any nature or description constructed for the purpose of drainage, including dikes and appurtenant works, which area drain financed in whole or in part by special assessment. This definition may include more than one watercourse or artificial channel constructed for the purpose of drainage when the watercourses or channels drain land within a practical drainage area.~~
3. "Benefited property" means property that has accrued a benefit from a project.
4. "Benefits" means the degree to which a society or an economy subject to a project is improved through lower costs, fewer damages, or enhancements.
5. "Cleaning out and repairing a drain" means deepening and widening a drain and removing obstructions or sediment, and any repair necessary to return the drain to a satisfactory and useful condition.
6. "Commission" means the state water commission.
- 4-7. "Conservation" means planned management of water resources to prevent exploitation, destruction, neglect, or waste.
- 5-8. "Costs of the frivolous complaint" means all reasonable costs associated with the requisite proceedings regarding the removal of obstructions to a drain, removal of a noncomplying dike or dam, or closing a noncomplying drain, including all reasonable construction costs; all reasonable attorney's fees and legal expenses; all reasonable engineering fees, including investigation and determination costs; compliance inspections; and necessary technical memorandum and deficiency review; and all costs associated with any hearing conducted by a district, including preparation and issuance of any findings of fact and any final closure order.
- 6-9. "District" means a water resource district.
- 7-10. "Drain" means any natural watercourse opened, or proposed to be opened, and improved for drainage, and any artificial channel constructed for drainage. The term includes dikes and appurtenant works and may include more than one watercourse or artificial channel when the watercourses or channels drain land within a practical drainage area.
11. "Frivolous" means allegations and denials in any complaint filed with a district made without reasonable cause and not in good faith.
- 8-12. "Lateral drain" means a drain constructed after the establishment of an original drain or drainage system and which flows into the original drain or drainage system from outside the limits of the original drain.
13. "Practical drainage area" means, for assessment drains, the practical drainage area determined by the survey and examination required under section 61-16.1-17.
14. "Project" means any undertaking for water conservation; flood control; water supply; water delivery; erosion control and watershed improvement; drainage of surface waters; collection, processing, and treatment of sewage; or discharge of sewage effluent; or any combination thereof, ~~including of~~

purposes in this subsection, and includes incidental features of any such the undertaking.

9-15. "Water resource board" or "board" means the water resource district's board of managers.

**SECTION 5. AMENDMENT.** Section 61-16.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-09. Powers of water resource board.**

Each water resource board shall have the power and authority to:

1. Sue and be sued in the name of the district.
2. Exercise the power of eminent domain as follows:
  - a. Except as permitted under subdivision b, the board shall comply with title 32 for the purpose of acquiring and securing by eminent domain 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.
  - b. (1) If the interest sought to be acquired is an easement for a right of way for any project authorized in this chapter for which federal or state funds have been made available, the district may acquire the right of way by quick take eminent domain as authorized by section 16 of article I of the Constitution of North Dakota, after the district attempts to purchase the easement for the right of way by:
    - (a) Conducting informal negotiations for not less than sixty days.
    - (b) If informal negotiations fail, the district shall engage in formal negotiations by:
      - [1] Sending the landowner an appraisal and written offer for just compensation, which includes a specific description of the exact location of the right of way, by certified mail or commercial delivery requiring a signed receipt, and receiving the signed receipt or documentation of constructive notice.
      - [2] Sending the landowner a written request for a meeting by certified mail or commercial delivery requiring a signed receipt if there is no agreement regarding compensation or no response to the written offer within fifteen days of receipt, and receiving the signed receipt or documentation of constructive notice.
      - [3] Sending the landowner a written notice, by certified mail or commercial delivery requiring a signed receipt, of intent to take possession of the right of way if there is no agreement regarding compensation or no response to the written request

for a meeting within thirty days of receipt, and receiving the signed receipt or documentation of constructive notice.

- (2) Any written communication to the landowner must include contact information for responding to the board and a description of the required negotiation timeline.
  - (3) A district may not include or utilize any reference to quick take eminent domain during negotiations to acquire the necessary easement for a right of way. If formal negotiation efforts fail, the district shall request approval from the board of county commissioners of the county in which the right of way is located to take possession of the right of way by quick take eminent domain. After receiving the request, the county commissioners shall hold a public meeting and give the landowner thirty days' notice of the meeting to allow the landowner to attend. After receiving verification from the district that there has been no reference or threat of quick take eminent domain by the district during negotiations, the commissioners shall vote on whether to approve the taking of the easement for a right of way using quick take eminent domain. If the county commissioners approve the use of quick take eminent domain by a majority vote, the district may take immediate possession of the right of way, but not a blanket easement, if the district files an affidavit by the chairman of the water resource board which states the district has fulfilled the required negotiation steps and deposits the amount of the written offer with the clerk of the district court of the county in which the right of way is located.
  - (4) 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.
  - (5) If ownership of a right of way has not terminated, ownership of a right of way acquired under this subdivision terminates automatically when the district no longer needs the right of way for the purpose for which it was acquired.
3. Accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purposes of aiding the construction or maintenance of water conservation, distribution, and flood control projects; and cooperate and contract with the state or federal government, or any department or agency thereof, or any municipality within the district, in furnishing assurances and meeting local cooperation requirements of any project involving control, conservation, distribution, and use of water.
  4. Procure the services of engineers and other technical experts, and employ an attorney or attorneys to assist, advise, and act for it in its proceedings.
  5. Plan, locate, relocate, construct, reconstruct, modify, maintain, repair, and control all dams and water conservation and management devices of every

nature and water channels, and to control and regulate the same and all reservoirs, artificial lakes, and other water storage devices within the district.

6. Maintain and control the water levels and the flow of water in the bodies of water and streams involved in water conservation and flood control projects within the district and regulate streams, channels, drains, or watercourses and the flow of water ~~therein~~ them by changing, widening, deepening, or straightening ~~the same~~, or otherwise improving ~~the use and capacity thereof~~; or by cleaning out and repairing a drain.
7. Regulate and control water for the prevention of floods and flood damages by deepening, widening, straightening, or diking the channels or floodplains of any stream or watercourse within the district, and construct reservoirs or other structures to impound and regulate such waters.
8. Make rules and regulations concerning the management, control, regulation, and conservation of waters and prevent the pollution, contamination, or other misuse of the water resources, streams, or bodies of water included within the district.
9. Do all things reasonably necessary and proper to preserve the benefits to be derived from the conservation, control, and regulation of the water resources of this state.
10. Construct, operate, and maintain recreational facilities, including beaches, swimming areas, boat docking and landing facilities, toilets, wells, picnic tables, trash receptacles, and parking areas, and to establish and enforce rules and regulations for the use thereof.
11. Have, in addition to any powers provided in this chapter, the authority to construct an assessment drain in accordance with the ~~procedures and provisions~~requirements of this chapter 64-24.
12. Acquire by lease, purchase, gift, condemnation, or other lawful means and to hold in its corporate name for its use and control both real and personal property and easements and rights of way within or without the limits of the district for all purposes authorized by law or necessary to the exercise of any other stated power.
13. Convey, sell, dispose of, or lease personal and real property of the district as provided by this chapter.
14. Authorize and issue warrants to finance construction of water conservation and flood control projects, assess benefited property for part or all of the cost of such projects, and require appropriations and tax levies to maintain sinking funds for construction warrants on a cash basis at all times.
15. Borrow money within the limitations imposed by this chapter for projects herein authorized and pledge security for the repayment of such loans.
16. Order or initiate appropriate legal action to compel the entity responsible for the maintenance and repair of any bridge or culvert to remove from under, within, and around such bridge or culvert all dirt, rocks, weeds, brush, shrubbery, other debris, and any artificial block which hinders or decreases the flow of water through such bridge or culvert.

17. Order or initiate appropriate legal action to compel the cessation of the destruction of native woodland bordering within two hundred feet [60.96 meters] of that portion of a riverbank subject to overflow flooding that will cause extensive property damage, or in the alternative, order, that, if such destruction is permitted, the party or parties responsible for the destruction must, when the board has determined that such destruction will cause excessive property damage from overflow flooding due to the erosion or blocking of the river channel, plant a shelterbelt which meets the specifications of the board. In the event the native woodland within such area has already been destroyed, the board may, in its discretion, order the planting of a shelterbelt which, in the judgment of the board, will curtail the erosion or blocking of such river channel where overflow flooding has caused extensive property damage. For purposes of this subsection, the words "riverbank" and "river channel" relate to rivers as defined in the United States geological survey base map of North Dakota, edition of 1963. The provisions of this subsection shall not be construed to limit, impair, or abrogate the rights, powers, duties, or functions of any federal, state, or local entity to construct and maintain any flood control, irrigation, recreational, or municipal or industrial water supply project.
18. Petition any zoning authority established pursuant to chapter 11-33, 11-35, or 40-47 or section 58-03-13 to assume jurisdiction over a floodplain for zoning purposes when such zoning is required to regulate and enforce the placement, erection, construction, reconstruction, repair, and use of buildings and structures to protect and promote the health, safety, and general welfare of the public within a floodplain area. In the event such zoning authority fails to act or does not exist, the board may request the state water commission to assist it in a study to determine and delineate the floodplain area. Upon completion of such study, the board shall make suitable recommendations for the establishment of a floodplain zone to all zoning authorities and the governing bodies of all political subdivisions having jurisdiction within the floodplain area.
19. Plan, locate, relocate, construct, reconstruct, modify, extend, improve, operate, maintain, and repair sanitary and storm sewer systems, or combinations thereof, including sewage and water treatment plants, and regulate the quantity of sewage effluent discharged from municipal lagoons; and contract with the United States government, or any department or agency thereof, or any private or public corporation or limited liability company, the government of this state, or any department, agency, or political subdivision thereof, or any municipality or person with respect to any such systems.
20. Develop water supply systems, store and transport water, and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes, irrigation, milling, manufacturing, mining, metallurgical, and any and all other beneficial uses, and fix the terms and rates therefor. Each district may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all works, facilities, improvements, and property necessary therefor.
21. Coordinate proposals for installation, modification, or construction of culverts and bridges in an effort to achieve appropriate sizing and maximum consistency of road openings. The department of transportation, railroads, counties, and townships shall cooperate with the districts in this effort. Each

district shall also consider the possibility of incorporating appropriate water control structures, where appropriate, as a part of such road openings.

22. Plug abandoned water wells and participate in cost-sharing arrangements with water well owners to plug water wells to protect aquifers from pollution or depletion, maintain pressure, and prevent damage to surrounding property.
23. Have, in addition to any powers provided in this chapter, the authority to conduct weather modification operations in accordance with the procedures and provisions of chapter 61-04.1.
24. Establish, deepen, widen, and improve drains; and extend drains as necessary to provide a suitable outlet or reasonably drain lands within a practical drainage area.
25. Install artificial subsurface drainage systems.

**SECTION 6.** A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

**Right of way - How acquired - Assessment of damages - Issuance of warrants.**

If lands assessed for drainage benefits are not contiguous to the drain, the water resource board may exercise eminent domain to acquire a right of way easement to the drain over the land of others. The right of way, when acquired, is the property of the water resource district in which the lands are located. The board may issue warrants in a sum sufficient to pay the damages assessed for the right of way. The warrants must be drawn upon the proper county treasurer or, if the water resource district treasurer is custodian of the drain funds, water resource district treasurer, and are payable out of drain funds in the hands of the treasurer which have been collected for the construction of the drain for which the right of way is sought.

**SECTION 7. AMENDMENT.** Section 61-16.1-09.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-09.1. Watercourses, bridges, and low-water crossings.**

1. A water resource board may undertake the snagging, clearing, and maintaining of natural watercourses and the debrisment of bridges and low-water crossings. The board may finance the project in whole or in part with funds raised through the collection of a special assessment levied against the land and premises benefited by the project. The benefits of a project must be determined in the manner provided in section ~~61-16.1-17~~61-16.1-18. Revenue from an assessment under this section may not be used for construction of a drain or reconstruction or maintenance of an existing assessment drain. Any question as to whether the board is maintaining a natural watercourse or is constructing a drain or reconstructing or maintaining an existing assessment drain must be resolved by the department of water resources. All provisions of this chapter apply to assessments levied under this section except:
  - a. An assessment may not exceed fifty cents per acre [40 hectare] annually on agricultural lands and may not exceed fifty cents annually for each five hundred dollars of taxable valuation of nonagricultural property; ~~and~~.

- b. If the assessment is for a project costing less than one hundred thousand dollars, no action is required for the establishment of the assessment district or the assessments except the board must approve the project and assessment 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.
- (1) If a board that undertakes a project finds the project will benefit lands outside water resource district boundaries, the board shall provide notice to the water resource board where the benefited lands are located together with the report prepared under section 61-16.1-17.
  - (2) The board of each water resource district containing lands benefited by a project must approve the project and assessment by a 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 a vote of two-thirds of its members.
  - (3) If a project and assessment is not approved by all affected water resource boards and county commission boards, the board of each water resource district and the board of county commissioners of each county shall meet to ensure all common water management problems are resolved pursuant to section 61-16.1-10. 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 the boundaries of the district.
- c. All revenue from an assessment under this section must be exhausted before a subsequent assessment covering any portion of lands subject to a prior assessment may be levied.
2. Before an assessment may be levied under this section, a public hearing must be held and attended by a quorum of the affected water resource boards and a quorum of the affected boards of county commissioners. 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.

**SECTION 8. AMENDMENT.** Section 61-16.1-15 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-15. ~~Financing project~~Initiating project financed through revenue bonds, general taxes, or special assessments - ~~Apportionment of benefits~~Bond required.**

A water resource board ~~shall have the authority~~, either upon request or by its own motion, ~~to may~~ acquire needed interest in property and provide for the cost of construction, alteration, repair, operation, and maintenance of a project through issuance of improvement warrants or with funds raised by special assessments, general tax levy, issuance of revenue bonds, or by a combination of general ad valorem tax, special assessments, and revenue bonds. ~~Whenever a water resource board decides to acquire property or interests in property to construct, operate, alter, repair, or maintain a project with funds raised in whole or in part through special~~

~~assessments, such assessments shall be apportioned to and spread upon lands or premises benefited by the project in proportion to and in accordance with benefits accruing thereto. The board shall assess the proportion of the cost of the project, or the part of the cost to be financed with funds raised through levy and collection of special assessments which any lot, piece, or parcel of land shall bear in proportion to the benefits accruing thereto and any county, city, or township which is benefited thereby. In determining assessments, the water resource board shall carry out to the maximum extent possible the water management policy of this chapter that upstream landowners must share with downstream landowners the responsibility to provide for the proper management of surface waters. A request under this section must be in writing and be accompanied by a bond in a sum the water resource board deems sufficient to pay all expenses of the board related to the petition in case the petition is denied. If the proposed project is an assessment drain, the request must identify the starting point, terminus, and general course of the proposed drain and be signed by at least two owners of property that would be drained by the proposed drain. If among the leading purposes of the proposed drain are benefits to the health, convenience, or welfare of the residents of any city, the petition must be signed by a sufficient number of the property owners of the city to satisfy the board there is a public demand for the drain. If a petition under this section is approved by voters under section 61-16.1-19 but the project is not constructed, the board may not require the petitioners to pay any expenses incurred by the board related to the petition.~~

**SECTION 9. AMENDMENT.** Section 61-16.1-17 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-17. ~~Financing of special improvements~~Assessment projects - Procedure - Engineer report.**

~~When it is proposed to finance in whole or in part the construction of a project with a water resource board receives a petition or approves a motion to construct a project with funds raised through the collection of special assessments levied against lands and premises benefited by construction and maintenance of such project, the water resource board shall examine the proposed project, and if in its opinion, if the water resource board decides further proceedings are warranted, itthe board shall adopt a resolution and declare that itdeclaring constructing and maintaining the proposed project is necessary to construct and maintain the project. The resolution shall briefly state, identifying the nature and purpose of the proposed project, and shall designate designating a registered engineer to assist the board. As soon as practicable, the board shall publish the resolution in the newspaper of general circulation in each area in which lands that reasonably may be condemned or subject to assessment for the project are located. For the purpose of making examinations or surveys, the board or its employees the board's agents, after written notice to each landowner at the landowner's address as shown by the tax rolls of the county in which the affected property is located, may enter upon any land on which the proposed project is located or any other lands necessary to gain access. The engineer shall prepare profiles, plans, and specifications, and total estimated costs of the proposed project and estimates of the total cost thereof. The estimate of costs prepared by the engineer shall must include acquisition of rightthe cost to acquire rights of way and shall be in sufficient detail to allow be sufficiently detailed for the board to determine the probable share of the total costs that will to be assessed against each of the affected landowners in the proposed project assessment district.~~

**SECTION 10. AMENDMENT.** Section 61-16.1-18 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-18. Hearing on assessment project - Notice - Contents.**

1. Upon the filing of the engineer's report provided for in section 61-16.1-17, and after satisfying the requirements of section 61-16.1-21, the water resource board shall fix a date and place for a public hearing on the proposed project. The place of hearing must be in the vicinity of the proposed project and must be convenient and accessible for the majority of the landowners subject to assessment for the project or whose property is subject to condemnation for the proposed project.
2. The board shall cause a complete list of the benefits and assessments to be made, setting forth each county, township, or city assessed in its corporate capacity as well as each lot, piece, or parcel of land assessed; the amount each is ~~would be~~ benefited by the ~~improvement~~ proposed project; and the amount assessed against each. At least ten days before the hearing, the board shall file with the county auditor of each county ~~or counties~~ in which the project is or will be located the list showing the percentage assessment against each parcel of land benefited by the proposed project and the approximate assessment in terms of money apportioned thereto. ~~Notice of the filing must be included in the notice of hearing. Notices to each parcel.~~
3. The water resource board shall provide notice of the hearing which must contain:
  - a. Include a copy of the petition, if any, and the resolution of the board as well as;
  - b. Specify the time and place where the board will conduct of the hearing. The notice of hearing must specify the general nature;
  - c. Identify the beginning, terminus, and general course of the project as finally determined by the engineer and the board. The notice of hearing must also specify;
  - d. Specify when and where votes concerning the proposed project may be filed. The ;
  - e. Include the assessment list showing the percentage assessment against each parcel of land benefited by the proposed project and the approximate assessment in terms of money apportioned thereto, along with a copy of the notice of the hearing, must be to each parcel;
  - f. Be mailed with a ballot to vote on the proposed project to each affected landowner at the landowner's address as shown by the tax rolls of the county or counties in which the affected property is located. The board may send the assessment list and notice and ballot by regular mail attested by an affidavit of mailing signed by the attorney or secretary of the board. The board shall cause the notice of hearing to be; and
  - g. Be published once a week for two consecutive weeks in the newspaper or newspapers of general circulation in the area in which the affected landowners reside and in the official county newspaper of each county in which the benefited lands are located.
4. The date set for the hearing must not be less than ~~at least~~ twenty days after the mailing of the notice ~~day the notice is mailed~~. A record of the hearing must be made by the board, ~~including~~ include a list of affected landowners present

in person or by agent, and ~~the record must be preserved in the minutes of the meeting. Affected landowners.~~ Each affected landowner and the governing body of any county, township, or city to be assessed; must be informed at the hearing of the probable total cost of the project and their individual share, the share of the cost the landowner or governing body will be assessed, and the portion of their landowner or governing body's property, if any, to be condemned for the project.

**SECTION 11. AMENDMENT.** Section 61-16.1-19 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-19. Voting on proposed projects - Notice of result.**

At the hearing on an assessment project, the affected landowners, and any county, township, or city to be assessed, must also be informed when and where votes concerning the proposed project may be filed. Affected landowners, and the governing body of any county, township, or city to be assessed, have thirty days after the date of the hearing to file their votes for or against the project with the secretary of the water resource board concerning the project. If a vote is mailed to the secretary, the vote is timely if the vote is received within the voting period. During the voting period, ballots may not be opened and votes may not be counted. Once the deadline for filing votes has been reached, ~~no more votes may be filed and no person may withdraw a vote~~ votes may not be filed or withdrawn. Any withdrawal of a vote concerning the proposed project before that time must be in writing. When ~~the votes have been filed and the deadline for filing votes has passed, the board immediately shall immediately determine whether the project is approved.~~ If the board finds that fifty percent or more of the total votes filed are against the proposed project, ~~then the vote constitutes a bar against proceeding further with the project.~~ If the board finds ~~that the number of votes filed against the proposed project is less than fifty percent of the votes filed, the board shall issue an order establishing the proposed project and may proceed, after complying with the requirements of sections 61-16.1-21 and 61-16.1-22, to may contract or provide for the construction or maintenance of the project in substantially the manner and according to the forms and procedure provided in title 40 for the construction of sewers within municipalities. The board may enter into an agreement with any federal or state agency under the terms of which the contract for the project is to be let by the federal agency, the state agency, or a combination thereof both. In projects in which~~ if there is an agreement that for a party other than the board will to let the contract, the board may dispense with all of the requirements of title 40. Upon making an order establishing a project or denying establishment of determining the vote bars establishing a project, the board shall publish notice of the order or determination in a newspaper of general circulation in the area in which the affected landowners reside and in the official county newspaper of each county in which the benefited lands are located. The notice must advise affected landowners of their right to appeal. Any right of appeal begins to run on the date of publication of the notice. ~~As used in this section, "board" means water resource board.~~

**SECTION 12. AMENDMENT.** Section 61-16.1-20 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-20. Voting right or powers of landowners.**

~~In order that there may be~~ The allocation of voting rights among affected landowners on the question of establishing a proposed project must provide a fair relationship between the amount of liability for assessments and the power of objecting to the establishment of a proposed the project, the voting rights of affected

landowners on the question of establishing the project are as provided in this section. ~~The landowner or landowners of tracts of land affected by the project. Affected landowners have one vote for each dollar of assessment that to which the land is subject to or one vote for each dollar of the assessed valuation of land condemned for the project, as determined in accordance with title 57. The governing body of any county, township, or city to be assessed also has one vote for each dollar of assessment against such the county, township, or city. There may be only one vote for each dollar of assessment, regardless of the number of owners of such a tract of land. Whereif there is more than one owner of such the land exists, the votes must be prorated among them the owners in accordance with each owner's property interest. A written power of attorney authorizes an agent to protest a project on behalf of any the affected landowner or landowners that executed the power of attorney.~~

**SECTION 13. AMENDMENT.** Section 61-16.1-21 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-21. Assessment of cost of project Calculating benefits and assessments - Certification.**

Whenever

1. ~~If the water resource board proposes to make any special assessment under the provisions of this chapter, the board, prior to before the hearing required under section 61-16.1-18, shall inspect any and all lots and parcels of land, which may be subject to assessment and shall determine from the inspection the particular lots and parcels of lands which, in the opinion of the board, will be especially benefited by the construction of the work for which the assessment is made and. The board shall assess determine the proportion of the total cost of acquiring right of way and constructing and maintaining such improvement the project in accordance with, but not exceeding, the benefits received but not exceeding such benefits, against:~~
  1. Any any county, township, or city, in its corporate capacity, which may be benefited directly or indirectly thereby.
  2. Any and any lot, piece, or parcel of land which is directly benefited by such improvement the project.
2. In determining benefits the board shall consider, among other factors, property values, degree of improvement of properties, and productivity, ~~and the water management policy as expressed in section 61-16.1-15. Property belonging to the United States shall be is exempt from such assessment under this chapter, unless the United States has provided for the payment of any assessment which may be levied against it the property for benefits received. Benefited property belonging to counties, cities, school districts, park districts, and townships shall not be is not exempt from such assessment under this chapter, and political subdivisions whose property is so assessed shall provide for the payment of such the assessments, installments thereof, and interest thereon, by the levy of taxes according to law. Any county, township, or city assessed in its corporate capacity for benefits received shall provide for the payment of such the assessments, installments thereof, and interest thereon from its the political subdivision's general fund or by levy of a general property tax against all the taxable property therein in the political subdivision in accordance with law. No tax limitation Tax limitations provided by any statute of this state shall do not apply to tax levies made by any such a political subdivision for the purpose of paying any special assessments made in accordance with the~~

~~provisions of~~ under this chapter. There shall be attached to the list of assessments a

3. ~~The board shall prepare a list identifying the assessments allocated to each lot and parcel of land for the project. A certificate signed by a majority of the members of the board certifying that the same is a true and correct assessment of the benefit therein must be attached to the list and state the assessment in the list are based on a correct determination of the benefits to the assessed land described to the best of the members' judgment and stating. The certificate also must identify the several items of expense included in the assessment.~~

**SECTION 14. AMENDMENT.** Section 61-16.1-22 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-22. Assessment list to be published - Notice of hearing - Alteration of assessments - Confirmation of assessment list - Filing.**

1. ~~After entering an order establishing the project, the water resource board shall cause the assessment list to be published once each week for three successive weeks in the newspaper or newspapers of general circulation in the district and in the official county newspaper of each county in which the benefited lands are located together with a notice of the time when, and place where, the board will meet to hear objections to any assessment by any interested party, or an agent or attorney for that party. The board also shall mail a copy of the notice of the hearing in an envelope clearly marked "ASSESSMENT NOTICE" to each affected landowner at the landowner's address as shown by the tax rolls of the county or counties in which the affected property is located. provide notice of a hearing at which the board will meet to hear objections to the proposed assessments from any interested party or agent for an interested party. The notice must:~~
  - a. Include a copy of the order establishing the project;
  - b. Specify the time and place of the hearing;
  - c. Identify the beginning, terminus, and general course of the project as finally determined by the engineer and the board;
  - d. Include the assessment list showing the percentage assessment against each parcel of land benefited by the proposed project and the approximate assessment in terms of money apportioned;
  - e. Be mailed to each affected landowner at the landowner's address as shown by the tax rolls of the county in which the affected property is located. The board may send the assessment list and notice by regular mail attested by an affidavit of mailing signed by the attorney or secretary of the board; and
  - f. Be published once a week for two consecutive weeks in the newspaper of general circulation in the area in which the affected lands are located.
2. ~~The date set for the hearing may not must be less than thirty at least twenty days after the mailing of the notice is mailed. At the hearing, the board may make such alterations in alter the assessments as in its opinion may be the board deems just and necessary to correct any error in the assessment but~~

~~must~~ shall make the aggregate of all assessments equal to either the total amount required to pay the entire cost of the work for which the assessments are made, or the part of the cost to be paid by special assessment. An assessment may not exceed the benefit as determined by the board to the parcel of land or political subdivision assessed. The board ~~then~~ shall ~~then~~ confirm the assessment list ~~and the~~. The secretary shall attach to the list a certificate ~~that the same~~ stating the list is correct as confirmed by the board and shall file the list in the office of the secretary.

**SECTION 15. AMENDMENT.** Section 61-16.1-23 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-23. Appeal to department of water resources.**

~~After~~ Within twenty days after the hearing provided for in meeting at which the water resource board approves the final assessment list required under section 61-16.1-22, affected:

1. Affected landowners and any political subdivision subject to assessment, having not less than ~~twentythree~~ thirty-three percent of the possible votes as determined by section 61-16.1-20, ~~who~~ which believe the assessment was not made fairly or equitably or the project is not located or designed properly, may appeal to the department of water resources by petition, ~~within ten days after the hearing on assessments,~~ to make a review of the assessments and to examine the location and design of the proposed project. Upon receipt of the petition the department shall examine the lands assessed and the location and design of the proposed project, and if it appears the assessments were not made equitably, the department may correct the assessments, and the department's correction and adjustment of the assessment is final. If the department believes the project was located or designed improperly, the department may order a relocation and redesign that must be followed in the construction of the proposed project.
2. Upon filing a bond for two hundred fifty dollars with the board for the payment of the costs of the department in the matter, any landowner or political subdivision claiming the landowner or political subdivision will receive no benefit from the construction of a new project may appeal that issue to the department ~~within ten days after the hearing on assessments.~~ Upon an appeal by an individual landowner or political subdivision, the department may determine whether there is any benefit to the landowner or political subdivision, but not the specific amount of benefit. The determination of the department regarding whether there is a benefit is final.
3. Before filing an appeal under this section, a landowner or political subdivision that meets the threshold for filing an appeal under this section may request assistance from the North Dakota mediation service to resolve grievances arising from the final assessment list. If the North Dakota mediation service agrees to assist the aggrieved person, the water resource board shall participate in good faith in the mediation. Requesting assistance or engaging in mediation under this section is not a prerequisite or a bar to appealing to the department under this section. Deadlines to initiate appeals are not tolled by a person requesting assistance from the North Dakota mediation service under this section.

**SECTION 16. AMENDMENT.** Section 61-16.1-24 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-24. When assessments may be made - Prohibition on certain contracts.**

After the requirements of this chapter have been satisfied and a contract and bond for any work for which a special assessment is to be levied have been approved by the water resource board, the board may direct special assessments to be levied for the payment of appropriate costs, and the secretary shall certify to the board the items of total cost to be paid by special assessments so far as ~~they~~the costs have been ascertained. The certificate shall ~~must~~ include the estimated construction cost under the terms of any contract, ~~for the project~~; a reasonable allowance for the cost of extra work ~~which~~that may be authorized under the plans and specifications; ~~acquisition of right of way;~~ engineering, fiscal agents' and attorney's fees for ~~any~~ services in connection with the authorization and financing of the ~~improvement~~project; cost of publication of required notices, ~~and~~; printing of improvement warrants; ~~cost necessarily paid for damages caused by such~~the improvement; ~~interest during the construction period;~~ and all expenses incurred in making the improvement and levy of assessments.

~~In no event shall any contract or contracts be awarded which exceed~~A contract that exceeds, by twenty percent or more, the estimated cost of the project as presented to and approved by the affected landowners is prohibited.

**SECTION 17. AMENDMENT.** Section 61-16.1-26 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-26. Reassessment of benefits.**

~~The~~A water resource board may hold at any time or, upon petition of any affected landowner or assessed political subdivision ~~which has been assessed after a project has been in existence for at least one year, shall hold a hearing for the purpose of determining to determine~~ the benefits of ~~such~~the project to each tract of land affected. Notice of the hearing must be given by publication once each week for three consecutive weeks, beginning at least thirty days before the hearing, in the newspaper ~~or newspapers~~ having general circulation in the district and in the official county newspaper of each county in which the benefited lands are located and by mailing notice of the hearing in an envelope clearly marked "ASSESSMENT NOTICE" to each owner of land in the assessed district at the landowner's address as shown by the tax rolls of the counties in which the affected property is located. The provisions of this chapter governing the original determination of benefits and assessment of costs apply to any reassessment of benefits carried out under this section. ~~The board may not be forced to make such~~Regardless of the number of petitions received, the board is not required to conduct a reassessment more than once every ten years, nor may any. An assessment or balance thereof supporting a project fund may not be reduced or impaired by reassessment or otherwise so long as bonds payable out of ~~such~~the fund remain unpaid and moneys are not available in ~~such~~the fund to pay all ~~such~~the bonds in full, with interest. Costs of maintenance must be prorated in accordance with any adopted plan for reassessment of benefits ~~that has been adopted.~~

**SECTION 18. AMENDMENT.** Section 61-16.1-27 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-27. Correction of errors and mistakes in special assessments - Requirements governing.**

If mathematical errors or other ~~such~~ mistakes occur in making any assessment resulting and result in a deficiency in that assessment, the board shall cause

additional assessments to be made in a manner substantially complying with chapter 40-26 as ~~the chapter~~ relates to special assessments.

**SECTION 19. AMENDMENT.** Section 61-16.1-28 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-28. Certification of assessments to county auditor.**

When a water resource board, by resolution, has caused special assessments to be levied to cover the cost of constructing a project, the board shall determine the rate of interest unpaid special assessments ~~shall must~~ bear, ~~which. The interest rate shall may~~ not exceed one and one-half percent above the warrant rate. Interest on unpaid special assessments ~~shall must~~ commence on the date the assessments are ~~finally~~ confirmed ~~finally~~ by the board. Special assessments may be certified and made payable in equal annual installments, the last of which ~~shall must~~ be due and payable not more than thirty years after the date of the warrants to be paid. The secretary of the district shall certify to the county auditor of the county in which the district is situated, or if the district embraces more than one county, to the county auditor of each county in which district lands subject to ~~such the~~ special assessments are situated, the total amount assessed against ~~such~~ lands in that county and the proportion or percentage of ~~such the~~ amount assessed against each piece, parcel, lot, or tract of land. The secretary of the district ~~also~~ shall ~~also~~ file with the county auditor of each county in which district lands lie a statement showing the cost of the project, the part ~~thereof of the cost~~, if any, ~~which will to~~ be paid out of the general taxes, and the part to be financed by special assessments. Funds needed to pay the cost of maintaining a project may be raised in the same manner as funds were raised to meet construction costs. If the project was financed in whole or in part through the use of special assessments, the water resource board shall prorate the costs of maintaining ~~projects the project~~ in the same proportion as were the original costs of construction or, in the event a reassessment of benefits has been adopted, the ~~eests shall be prorated board shall prorate costs~~ in accordance with the reassessment of benefits as authorized by section 61-16.1-54.

**SECTION 20. AMENDMENT.** Section 61-16.1-42 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-42. Drains along and across public roads and railroads.**

1. Drains may be laid along, within the limits of, or across any public road or highway, but not to the injury of ~~such the~~ road. ~~In instances where it is self, during the preparation of the report required under section 61-16.1-17, a water resource board discovers it may be necessary to run a drain across a highway, the water resource board shall notify and solicit guidance from the department of transportation, the board of county commissioners, or the board of township supervisors, as the case may be, when notified by the water resource board to do so, as soon as practicable. If the water resource board determines the drain must be run across the highway after considering any guidance received from the department of transportation, board of county commissioners, or board of township supervisors, the department of transportation, board of county commissioners, or board of township supervisors shall make necessary openings through the road or highway at its own expense, and shall build and keep in repair all required after receiving notice of the water resource board's determination. The cost to build, maintain, and repair the culverts or bridges must be allocated as provided under section 61-16.1-43. In instances where drains are laid along or within the rights of way~~

of roads or highways, the drains shall be maintained and kept open by and at the expense of the water resource district concerned.

2. A drain may be laid along any railroad when necessary, but not to the injury of the railroad, and when it is necessary to run a drain across the railroad, if, during the preparation of the report required under section 61-16.1-17, a water resource board discovers it may be necessary to run a drain across a railroad, the water resource board shall notify and solicit guidance from the railroad company as soon as practicable. If the water resource board determines the drain must be run across the railroad after considering any guidance received from the railroad company, the railroad company, when notified by the water resource board to do so of the water resource board's determination, shall make the necessary opening through such railroad, shall build the required bridges and culverts, and shall keep them in repair.

**SECTION 21. AMENDMENT.** Section 61-16.1-43 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-43. Construction of bridges and culverts - Costs.**

1. The water resource board shall construct ~~such~~any bridges or culverts over or in connection with a drain as in its judgment may be necessary to furnish passage from one part to another of any private farm or tract of land intersected by ~~such~~the drain. The cost of ~~such construction shall~~constructing the bridge or culvert must be charged as part of the cost of constructing the drain, ~~and any such. The bridge, or culvert, or passageway shall~~ must be maintained under the authority of the water resource board, and the necessary expense ~~shall~~must be deemed a part of the cost of maintenance.

Whenever

2. When any bridge or culvert is to be constructed on a county or township highway system over and across or in connection with a drain, the water resource board shall notify the county or township with authority for the highway and provide the county or township reasonable time to review and provide input on the plans for the bridge or culvert. The bridge or culvert must be maintained by the county or township and all necessary maintenance expenses must be borne forty percent by the county and sixty percent by the water resource board, unless otherwise agreed upon by the water resource board and the highway authority. If the highway authority and the water resource board cannot agree on the necessity or proper methodology for maintaining the bridge or culvert, the requesting party may appeal the denial under chapter 28-34. The cost of constructing ~~such~~the bridge or culvert shall must be shared in the following manner:
  1. a. ~~The~~ funds are available, the state water commission may, if funds are available, participate in accordance with such rules and regulations as it may prescribe according to the commission's rules or policies. The remaining cost shall must be borne forty percent by the county and sixty percent by the district ~~which has~~that created the need for ~~such~~the construction.
  2. b. If, however, moneys have not been made funds are not available to the commission for participation in accordance with subsection 1, then forty percent of the cost of a bridge or culvert shall must be paid by the county

and sixty percent ~~shall~~must be charged as the cost of the drain to the district.

3. ~~Where such bridges or culverts are~~

- c. Upon request from the water resource board, the county shall request federal emergency funds for the construction. If the bridge or culvert is constructed with federal financial participation, including any federal emergency funds, the costs exceeding the amount of the federal participation shall~~must~~ be borne by the district and county according to the provisions of this section,~~as the case may be.~~

**SECTION 22.** A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

**Assessment drain culverts.**

If, during the preparation of the report required under section 61-16.1-17 or during the planning for maintenance or reconstruction of an existing assessment drain, a water resource board discovers it may be necessary to install a culvert through a road not on the route of the assessment drain, but which is within the assessment area and necessary for surface water to reach the assessment drain, the water resource board shall notify and solicit guidance from the department of transportation, board of county commissioners, or board of township supervisors, as the case may be, as soon as practicable. If the water resource board determines the culvert is necessary after considering any guidance received from the department of transportation, board of county commissioners, or board of township supervisors, the department of transportation, board of county commissioners, or board of township supervisors shall make necessary openings through the road or highway at its own expense after receiving notice of the water resource board's determination. The cost to build, maintain, and repair the culverts must be allocated as provided under section 61-16.1-43.

**SECTION 23. AMENDMENT.** Section 61-16.1-51 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-51. Removal of obstructions to drain - Notice and hearing - Appeal - Injunction - Definition.**

1. If a water resource board determines that an obstruction to a drain has been caused by the result of a natural occurrence, such as sedimentation or vegetation, or by the negligent act or omission of a landowner or tenant, the board shall notify the landowner by registered mail at the landowner's post-office address of record. A copy of the notice also must ~~also~~ be sent to the tenant, if any. The notice must specify the nature and extent of the obstruction; and the opinion of the board as to its cause, and must state ~~that~~ if the obstruction is not removed within ~~sue~~the period as the board determines, but not less than fifteen days, the board shall procure removal of the obstruction and assess the cost of the removal, or the portion the board determines appropriate, against the property of the landowner responsible. The notice also must ~~also~~ state ~~that~~ the affected landowner, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing on the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may apply immediately ~~apply~~ to the appropriate district court for an injunction prohibiting a landowner or tenant from maintaining an

obstruction. Assessments levied under the provisions of this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. A landowner aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided in section 28-34-01. A hearing as provided for in under this section is not a prerequisite to an appeal. If a complaint is frivolous in the discretion of the board, the board may assess the costs of the frivolous complaint against the complainant. If the obstruction is located in a road ditch, the timing and method of removal must be approved by the appropriate road authority before the notice required by this section is given and appropriate construction site protection standards must be followed.

2. For the purposes of this section, "an obstruction to a drain" means a natural or artificial barrier to a watercourse, as defined by section 61-01-06, or an artificial drain, including if the watercourse or drain is located within a road ditch, ~~which that materially affects the free flow of waters in the watercourse or drain.~~
3. Following removal of an obstruction to a drain, either by a water resource board or by a party complying with an order of a water resource board, the board may assess its costs against the property of the responsible landowner.

**SECTION 24. AMENDMENT.** Section 61-16.1-54 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-54. Appeal from decision of water resource board - Undertaking - Jurisdiction.**

~~An appeal may be taken to the district court from any~~An aggrieved person may appeal an order or decision of ~~the~~ water resource board ~~by any person aggrieved to the district court of the county in which the land claimed to be affected adversely by the order or decision is located.~~ An appellant shall file an undertaking in the sum of two hundred dollars with ~~such~~any sureties ~~as may be approved~~required by the clerk of the district court to which the appeal is taken. The undertaking must be conditioned ~~that the appellant will prosecute on the appellant prosecuting~~ the appeal without delay and ~~will pay~~paying all costs adjudged against the appellant in the district court. The undertaking must be in favor of the water resource board as obligee, and may be sued on in the name of the obligee. ~~The appeal must be taken to the district court of the county in which the land claimed to be affected adversely by the order or decision appealed from is located and~~An appeal under this section is governed by the procedure provided in section 28-34-01.

**SECTION 25.** A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

**Designation of lateral drain.**

A determination by a water resource board as to whether an existing or proposed drain is a lateral drain is a conclusive determination when entered on the records of the board.

**SECTION 26.** A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

**Notice of letting of contracts.**

After the recording of percentage assessments as provided in section 61-16.1-22, the board shall give at least ten days' notice of the time and place where contracts will be let for the construction of the drain. The notice must be published at least once in a newspaper having general circulation in the county.

**SECTION 27.** A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

**Extension of time to contractors - Reletting unfinished part of contract.**

A water resource board may grant a reasonable extension of time for the completion of any contract. If a board reasonably believes the work required under a contract will not be completed by the agreed upon deadline, the board may relet any unfinished portion to the lowest responsible bidder, and shall take security as before. The cost of completing the unfinished portions over and above the contract price, and the expense of notices and reletting, must be collected by the board from the parties first contracting. The board may not terminate a contract without giving five days' notice to the contractor, provided the contractor may be found or has a known place of residence in the county. The notice may be given to the contractor personally or may be left at the contractor's place of residence.

**SECTION 28.** A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

**Procedure to construct or extend an assessment drain through or into two or more counties.**

To construct or extend an assessment drain in two or more counties, a petition must be presented to the several water resource boards for the area in which the drain will lie for the establishment of the drain under this chapter. The boards shall hold a joint meeting and shall determine the necessity or expediency of the establishment of the drain. To proceed with the drain, the boards shall agree upon the proportion of damages and benefits to accrue to the lands affected in each county, and for this purpose the boards shall consider the entire course of the drain through all the counties as one drain. If the boards fail to agree upon the benefits to accrue to the lands in each county, the boards shall submit the points in controversy to the department of water resources, and the department's decision is final. The boards may apportion the cost of establishing and constructing the entire drain ratably and equitably upon the lands in each county in proportion to the benefits to accrue to the county's lands. When the boards have apportioned the costs, the boards shall make written reports of the apportionment to the auditors of the several counties affected. The reports must show the portion of cost of the entire drain to be paid by taxes upon the lands in each of the counties and must be signed by the boards of all counties affected. Upon the filing of the reports, the several boards shall meet and assess against the lands in each of the counties, ratably and equitably as provided by this chapter, an amount sufficient to pay the proportion of the cost of the drain in each county. The provisions of this chapter relating to drains within a single county govern the establishment, construction, maintenance, repair, and cleanout of the drains.

**SECTION 29.** A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

**Drain warrants - Terms and amounts.**

Drain costs must be paid upon order of the board by warrants signed by the chairman and one other member of the board. The warrants are payable from the proper drain fund and, upon maturity, are receivable by the treasurer for drain assessments supporting the fund. The warrants may be issued at any time after the order establishing the drain has become final and after incurring liability to pay for drain work to be financed by drain assessments and in anticipation of levy and collection of the assessments. Every warrant not made payable on demand must specify the date when it becomes payable. Demand warrants not paid for want of funds must be registered by the county treasurer or, if the water resource district treasurer is custodian of the drain funds, the water resource district treasurer and bear interest at a rate determined by the board, not exceeding eight percent per annum. Warrants of specified maturities bear interest according to their provisions at a rate or rates resulting in an average net interest cost not exceeding twelve percent per annum if sold at private sale, and may be issued with interest coupons attached. There is no interest rate ceiling on warrants sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. All drain warrants must state upon their faces the purpose for which they are issued and the drain fund from which they are payable. The warrants may be used to pay drain obligations, or may be sold at not less than ninety-eight percent of par value, provided that the proceeds of warrants sold are placed in the proper drain fund and used exclusively for drain expenses. Any unpaid warrants issued for the acquisition of right of way or the construction of a drain, including all incidental costs in connection with the acquisition or construction, must be funded by a bond issue within one hundred eighty days from and after the filing of the assessment of all costs with the county auditor as provided in section 61-16.1-28, but this requirement may not be construed as prohibiting the funding of warrants or the issuance of bonds after the one hundred eighty-day period.

**SECTION 30.** A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

**Settlement of unpaid warrants.**

A board of county commissioners may negotiate and execute a settlement with the owners of drain warrants and pay the amount of the settlement from the general fund of the county if:

1. Drain warrants issued pursuant to the establishment of a drain in two or more counties remain unpaid;
2. The amounts realized from the original assessments are not sufficient to pay the warrants;
3. An additional assessment would be necessary to meet the deficit; and
4. The board finds the county has received benefits from the drain by reasons of public health, convenience, or welfare and, as a result, may be liable for assessment or reassessment and the credit of the county is or may be affected by the existence of the outstanding and unpaid warrants.

**SECTION 31.** A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

**Closing of noncomplying drain - Notice and hearing - Appeal - Injunction.**

If the board determines a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to this chapter or any rules adopted by

the board, the board shall notify the landowner by registered mail at the landowner's address of record. A copy of the notice also must be sent to the tenant, if any. The notice must specify the nature and extent of the noncompliance and must state if the drain, lateral drain, or ditch is not closed or filled within the period the board determines, but not less than fifteen days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost, or the portion the board determines, against the property of the landowner responsible. The notice also must state the affected landowner, within fifteen days of the date the notice is mailed, may demand in writing a hearing on the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may apply immediately to the appropriate district court for an injunction prohibiting the landowner or tenant from maintaining the drain, lateral drain, or ditch. Assessments levied under this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. A landowner aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided for in section 28-34-01. A hearing as provided for in this section is not a prerequisite to an appeal.

**SECTION 32.** A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

**Reconveyance of land no longer required for drainage.**

When land acquired for drainage is no longer required for drainage, the board of county commissioners may reconvey the land to the present owner of the adjacent property if the present owner of the adjacent property surrenders all warrants issued in payment of the land or repays the amount of cash paid for the land.

**SECTION 33.** A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

**Sinking funds and bonds.**

A water resource board shall establish a sinking fund for each issue of bonds, and the fund must consist of all drain assessments made for the bonds, all warrants funded, all assessments for the warrants, all accrued interest received on sale of bonds, all proceeds of bonds sold not actually expended for the drain, the reserve fund authorized for purchase of tax delinquent lands affected by the drain, all general tax levies for payment of obligations of the drain, and any other moneys that may be appropriated to the sinking fund. Separate sinking funds must be provided for each separate drain for which bonds have been issued. Until the purpose of the sinking fund has been fulfilled, moneys in the sinking fund may not be applied to any purpose other than payment of the bonds for which the fund was created.

**SECTION 34.** A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

**Existing obligations and regulations.**

Except as specified, amendments to this chapter do not affect the validity of any valid outstanding warrants, bonds, or other obligations of drainage districts, and all sinking funds created for the payment of these obligations continue in force until the liquidation of the obligations. All valid rules adopted by any board of county

commissioners or board of drainage commissioners remain in full force and effect until altered or repealed by the board.

<sup>320</sup> **SECTION 35. AMENDMENT.** Subdivision g of subsection 4 of section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

- g. If the subsurface water management system will discharge into the watershed area of an assessment drain, inclusion of the relevant property into the assessment district for the assessment drain in accordance with the benefits the property receives, provided the property is not assessed already for the assessment drain. The water resource district may include the new property into the assessment district, and determine the benefits and assessment amounts under ~~chapters 61-21 and~~chapter 61-16.1, without conducting the reassessment of benefit proceedings under ~~sections 61-21-44 and~~section 61-16.1-26, provided the property is not assessed already for the assessment drain.

**SECTION 36. REPEAL.** Section 61-16.1-01 and chapter 61-21 of the North Dakota Century Code are repealed.

Approved April 12, 2023

Filed April 13, 2023

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<sup>320</sup> Section 61-32-03.1 was also amended by section 25 of House Bill No. 1038, chapter 65.

## CHAPTER 570

### HOUSE BILL NO. 1391

(Representatives Schatz, Bellew, Dockter, Hauck, VanWinkle)  
(Senators Boehm, Luick, Paulson)

AN ACT to amend and reenact section 61-16.1-04 of the North Dakota Century Code, relating to the publication and distribution of water resource board meeting minutes.

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

**SECTION 1. AMENDMENT.** Section 61-16.1-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **61-16.1-04. Minutes, books, and records.**

The water resource board shall keep accurate minutes of its meetings and accurate records and books of account, clearly setting out and reflecting the entire operation, management, and business of the district. The unofficial minutes of the meeting must be provided to the official newspaper of the county for publication or, if applicable, posted to the water resource board's website or the official county website within ten days. These books and records shall be kept at the principal office of the district or at such other regularly maintained office or offices of the district as shall be designated by the board, with due regard to the convenience of the district, its customers, and residents. The books and records shall be open to public inspection during reasonable business hours.

Approved April 29, 2023

Filed May 1, 2023

## CHAPTER 571

### SENATE BILL NO. 2372

(Senators Lemm, Luick)

AN ACT to create and enact a new subsection to section 61-16.1-11 and section 61-16.1-15.1 of the North Dakota Century Code, relating to joint water resource boards and the construction of a water project in more than one county; and to amend and reenact section 61-16.1-12.1 of the North Dakota Century Code, relating to joint water resource boards.

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

**321 SECTION 1.** A new subsection to section 61-16.1-11 of the North Dakota Century Code is created and enacted as follows:

All districts within the Red River, James River, Mouse River, Missouri River, and Devils Lake drainage basins shall, by agreement, form and remain a member of a joint water resource board relative to the district's respective drainage basin. All agreements and subsequent amendments must be filed with the department of water resources. Notwithstanding other provisions of law, the board of county commissioners of the member districts in the Red River, James River, Mouse River, Missouri River, and Devils Lake drainage basins shall approve a levy of tax not to exceed two mills upon the taxable valuation of the real property within each joint board's respective drainage basin.

**SECTION 2. AMENDMENT.** Section 61-16.1-12.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **61-16.1-12.1. Water resource boards - Agreements with state or federal agencies for certain improvements.**

A water resource board may enter into an agreement with any federal or state agency, or any combination thereof, for the construction of a project, under the terms of which the contract for the work is to be let by the federal or state agency or any combination thereof. If under the terms of the agreement at least fifty percent of the total cost of constructing the project is to be paid by the agency or agencies and if any portion of the cost of the project is to be paid by the levy of special assessments, the board may by resolution create a project assessment district for the purpose of levying special assessments to finance the amount that the district will be obligated to pay in accordance with the agreement, over and above any other funds ~~which~~that are on hand and properly available for that purpose. The assessment district must be of a size and form as to include all properties ~~which~~that in the judgment of the board, after consultation with a registered engineer designated by the board for that purpose, will be benefited by the construction of the proposed project, and the board shall direct the engineer to prepare a map showing the boundaries of the proposed assessment district. The board shall by resolution declare the necessity of the project, set forth the general nature and purpose of the proposed project, estimate the total cost of the

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<sup>321</sup> Section 61-16.1-11 was also amended by section 52 of Senate Bill No. 2015, chapter 47.

project, and the approximate amount or fraction of the cost ~~which~~that the district will be obligated to pay under the agreement, and the fact that this amount, or a lesser amount as the board may specify, is proposed to be paid by the levy of special assessments upon property within the assessment district determined to be benefited by the project. The board shall cause the resolution of necessity together with a copy of the map showing the boundaries of the assessment district and a notice stating the date and time by which the owners of any property liable to be specially assessed for the proposed project must file their votes on the proposed project with the secretary of the board to be mailed to each landowner affected by the proposed project as determined by the tax rolls of the county in which the affected property is located. The board may send the material by certified mail or by regular mail attested by an affidavit of mailing signed by the attorney or secretary of the board. The notice also must ~~also~~ set forth the time and place where the board shall meet to determine whether the project is approved. The notice must also be published once in a newspaper of general circulation in the district and once in the official county newspaper of each county in which the benefited lands are located. Within five days after the first mailing of the resolution the board shall cause a copy of the resolution to be personally served upon any county, city, or township, school district, park district, or other political subdivision, in its corporate capacity which may be benefited directly or indirectly from the construction of the proposed project and upon any county which may become liable for any deficiency in the fund to be created for the project, by delivering a copy of the resolution to any member of the governing body thereof. The meeting must be held not less than thirty days after the mailing of the resolution, at which time the board shall determine whether the project is approved. If the board finds that fifty percent or more of the total votes filed are against a proposed project, then the board may not proceed further with the proposed project. If the board finds that less than fifty percent of votes filed are against the proposed project, the board may proceed with the project. In any assessment district created under this section the board may dispense with all other requirements of this chapter, other than those stated in this section. After the contract for the work has been let, the board may issue warrants on the fund of the project for the total amount of the cost thereof, and the board, without holding the hearing required by section 61-16.1-18, shall proceed to determine and levy any assessments against property benefited by the project and prepare an assessment list ~~all~~ in accordance with the procedures required by sections 61-16.1-21 through 61-16.1-24. ~~The provisions of sections~~Sections 61-16.1-25 through 61-16.1-36 ~~are applicable~~apply to the assessments and the special warrants issued pursuant to this section.

**SECTION 3.** Section 61-16.1-15.1 of the North Dakota Century Code is created and enacted as follows:

**Projects or benefits in more than one county.**

1. The districts from two or more counties may agree to jointly construct or assign benefits and assessments for a project. Two or more districts shall create a joint board under section 61-16.1-11 before constructing a project and before assessing the lands or premises for a project that benefits or is located in more than one county. If the districts do not agree to undertake a joint project, a district may undertake the project by providing notice to the joint board where the project is located, in either the Red River, James River, Mouse River, Missouri River, or Devils Lake drainage basin, together with the engineer's report required under section 61-16.1-17.
2. If the joint board finds the project is necessary, and the benefits of the project will exceed the costs, the joint board shall proceed with the procedures in sections 61-16.1-15 through 61-16.1-36 regarding:

- a. The creation, construction, alteration, repair, operation, and maintenance of a project and an assessment district;
  - b. The determination and levy of assessments against property benefited by the project; and
  - c. The special warrants issued pursuant to this chapter.
3. If the assessment vote is successful, the joint board shall construct, own, operate, and maintain the project. The joint board shall administer the corresponding assessment district for the project in accordance with this chapter.

Approved April 20, 2023

Filed April 21, 2023

## CHAPTER 572

### HOUSE BILL NO. 1076

(Energy and Natural Resources Committee)  
(At the request of the Department of Water Resources)

AN ACT to amend and reenact section 61-16.1-38 of the North Dakota Century Code relating to the department of water resources authority regarding water permit thresholds for dikes, dams, and other devices; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 61-16.1-38 of the North Dakota Century Code is amended and reenacted as follows:

#### **61-16.1-38. Permit to construct or modify dam, dike, or other device required - Penalty - Emergency.**

~~No dikes~~ Dikes, dams, or other devices for water conservation, flood control regulation, watershed improvement, or water storage of water which are ~~must be constructed in accordance with this chapter. A permit is required from the department for the construction of a low-hazard dam or other device capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or; a medium-hazard or high-hazard dam capable of retaining, obstructing, or diverting more than twenty-five acre-feet [30837.04 cubic meters] of water for a~~ medium-hazard or high-hazard dam, may be constructed within any district except in accordance with the provisions of this chapter; an agricultural dike capable of protecting more than eighty acres [32.37 hectares] of land area; or any dike capable of protecting an occupied residence or structure or public infrastructure. A ~~A permit application for the construction of any dike, dam, or other device, along with complete plans and specifications, must be presented first~~ submitted to the department of water resources. Except for low-hazard dams less than ten feet [3.05 meters] in height or, agricultural dikes less than two feet [0.61 meters] in height, or a farmstead ring dike, the plans and specifications must be completed by a professional engineer. The professional engineer must be registered in this state. After receipt, the ~~The department shall consider the application in such detail as the department deems necessary and proper. The department shall refuse to allow the construction of any unsafe or improper dike, dam, or other device which that would interfere with the orderly control of the water resources of the district, or may order changes, conditions, or modifications as in the judgment of the department~~ department's judgment may be necessary for safety or the protection of property. Within forty-five days after application receipt of the application, except in unique or complex situations, the department shall complete the initial review of the application and forward the application, along with any changes, conditions, or modifications, to the water resource board of the district within which the contemplated project is located. The board shall consider the application within forty-five days, and suggest any changes, conditions, or modifications to the department. If the board approves the application, the board shall forward the approved application to the department. If the board fails to respond within forty-five days, the board will be deemed to have no changes, conditions, or modifications to make. The department shall make the final decision on the application and forward that decision to the applicant and the local water resource board. The department may issue temporary permits for dikes, dams,

or other devices in cases of an emergency. Any person constructing a dam, dike, or other device ~~capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam,~~ without first securing a necessary permit ~~to do so~~, as required by this section, is liable for all damages proximately caused by the dam, dike, or other device, and is guilty of a class B misdemeanor.

Approved March 29, 2023

Filed March 30, 2023

## CHAPTER 573

### HOUSE BILL NO. 1098

(Political Subdivisions Committee)  
(At the request of the Adjutant General)

AN ACT to amend and reenact subsection 2 of section 61-16.2-09 of the North Dakota Century Code, relating to the enforcement and penalties of communities that fail to adopt or enforce floodplain management ordinances as required under the national flood insurance program.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 61-16.2-09 of the North Dakota Century Code is amended and reenacted as follows:

2. Any community which fails to adopt or enforce floodplain management ordinances as required under the national flood insurance program [42 U.S.C. 4001 et seq.] by this chapter shall not be eligible to receive any flood disaster assistance, financial or otherwise, from this state pursuant to chapter 37-17.1 or any other state funds available under any other authority for flood relief under the national flood insurance program [42 U.S.C. 4001 et seq.] relating to insurable structures located within federal emergency management agency-identified special flood hazard areas.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 574

### SENATE BILL NO. 2364

(Senators Klein, Luick, Sorvaag)  
(Representatives Nelson, Weisz)

AN ACT to create and enact a new section to chapter 61-24 of the North Dakota Century Code, relating to the Garrison Diversion Conservancy District and permanent easements.

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

**SECTION 1.** A new section to chapter 61-24 of the North Dakota Century Code is created and enacted as follows:

##### **Permanent easements - Limitations.**

The district's use of the permanent easement property is restricted solely to the construction, operation, and maintenance of facilities authorized by law. The district may not rent, sell, or assign the rights to a permanent easement, except may reserve the right to assign the permanent easement to the state of North Dakota if necessary for the operation and maintenance of a public water pipeline. If the district ceases operation, all permanent easements must be transferred to the public water system receiving a beneficial use from the water pipelines and other facilities. If no public water system exists, all permanent easements must transfer to the state. The state or public water system shall assume full responsibility for all easement activities and responsibilities, including any environmental remediation obligations.

Approved April 12, 2023

Filed April 13, 2023

## CHAPTER 575

### HOUSE BILL NO. 1218

(Representatives Nelson, D. Anderson, Davis, M. Ruby)  
(Senators Sorvaag, Vedaa)

AN ACT to amend and reenact sections 61-24.6-02, 61-24.6-03, 61-24.6-04, and 61-24.6-06 of the North Dakota Century Code, relating to the creation of the northwest area water supply authority; and to provide for application.

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

**SECTION 1. AMENDMENT.** Section 61-24.6-02 of the North Dakota Century Code is amended and reenacted as follows:

**61-24.6-02. Northwest area water supply advisory committee authority - Created.**

The northwest area water supply advisory committee authority consists of the following representatives; who, except for the members elected under subsection 5, are appointed by the director of the department of water resources state water commission:

1. One person ~~Four representatives~~ from the city of Minot recommended by the Minot city council.
2. One representative from the North Prairie regional water district.
3. One person from the Bottineau, Burke, McHenry, McLean, Pierce, Renville, and Ward County water resource districts recommended jointly by the governing boards of the Bottineau, Burke, McHenry, McLean, Pierce, Renville, and Ward County water resource districts representative of all seasons water users district recommended by the all seasons users district board of directors.
- 3-4. One representative of the state water commission recommended by the commission upper Souris water district recommended by the upper Souris water district board of directors.
- 4-5. One representative of the Turtle Mountain Band of Chippewa Indians recommended by the tribal council who will serve as a nonvoting member One representative of cities other than the city of Minot, with direct water service from the northwest area water supply project to be selected by election by cities during the annual meeting of the North Dakota league of cities.
- 5-6. One representative of rural water distribution systems located in northwestern North Dakota. This representative must be a resident of Bottineau, Burke, McHenry, McLean, Pierce, Renville, or Ward County the state water commission who resides in the Souris River basin recommended by the state water commission.

- ~~6-7.~~ One representative of a municipality other than the city of Minot, located in Bottineau, Burke, McHenry, McLean, Pierce, Renville, or Ward County ~~the Garrison Diversion Conservancy District recommended by the Garrison Diversion Conservancy District board of directors who serves as a nonvoting member.~~
- ~~7-8.~~ One representative of the Garrison Diversion Conservancy District recommended by the board of directors of the conservancy district ~~Turtle Mountain Band of Chippewa Indians recommended by the tribal council who will serve as a nonvoting member.~~
8. One at-large representative.

**SECTION 2. AMENDMENT.** Section 61-24.6-03 of the North Dakota Century Code is amended and reenacted as follows:

**61-24.6-03. Advisory committee Northwest area water supply authority - Duty - Officers - Meetings - Compensation - Staffing.**

The northwest area water supply ~~advisory committee~~ authority shall develop recommendations for the legislative management regarding the transition of long-term operations and management of the northwest area water supply project. ~~The members of the authority shall serve four-year terms.~~ The ~~advisory committee~~ authority shall elect a chairman and vice chairman and meet no less ~~often~~ than once per quarter at the times and places necessary to carry out the purposes of this chapter. The ~~advisory committee~~ authority members may be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09. The ~~advisory committee~~ authority members serve at the pleasure of the ~~director of the department of water resources~~ state water commission. Vacancies must be filled in the same manner as original appointments are made. The ~~state water commission~~ department of water resources shall provide staffing and support for the ~~advisory committee~~ authority.

**SECTION 3. AMENDMENT.** Section 61-24.6-04 of the North Dakota Century Code is amended and reenacted as follows:

**61-24.6-04. Powers of the state water commission in consultation with the northwest area water supply advisory committee authority.**

The state water commission shall consult with the northwest area water supply ~~advisory committee~~ authority regarding the following duties of the commission:

1. Accept funds, property, services, or other assistance, financial or otherwise, from federal, state, tribal, and other public or private sources for the purpose of aiding and promoting the development of a project to deliver water to northwestern North Dakota.
2. Cooperate and contract with the state, its agencies, or its political subdivisions, the Three Affiliated Tribes, or any agency of the United States, in research and investigation or other activities promoting the development of a project to deliver water to northwestern North Dakota.
3. Appoint and procure the services of engineers, attorneys, and others to assist in developing a project to deliver water to northwestern North Dakota.

4. Exercise such other powers as may be necessary for, or incidental to, the achievement of the purposes of this chapter.
5. Construct, operate, and manage a project to deliver water throughout the project area.

**SECTION 4. AMENDMENT.** Section 61-24.6-06 of the North Dakota Century Code is amended and reenacted as follows:

**61-24.6-06. Commission to fix water rates for the northwest area water supply project.**

The state water commission, after consulting with the northwest area water supply ~~advisory committee~~ <sup>authority</sup>, shall establish the payments for water service to be paid by water user entities for purchase of water from the northwest area water supply project. The payments for water service must include each water user entity's proportionate share of the operation, maintenance, and replacement costs, and also include a component for payment for capital costs. The commission shall include in its determination of each water user entity's share of operation, maintenance, and replacement costs an amount to be deposited in the northwest area water supply project reserve fund for replacement, as established by section 61-24.6-07, for replacement and extraordinary maintenance of northwest area water supply project works. The amount of the reserve fund for replacement must be determined by the commission.

**SECTION 5. APPLICATION.** Notwithstanding section 60-24.6-03, the terms of the initial members of the northwest area water supply authority may be for a period of less than four years in order to initiate staggered terms.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 576

### HOUSE BILL NO. 1239

(Representatives Schreiber-Beck, Beltz, D. Johnson, Pyle, Thomas)  
(Senators Klein, Sorvaag)

AN ACT to create and enact a new section to chapter 61-32 of the North Dakota Century Code, relating to smaller subsurface water management systems; to provide a penalty; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 61-32 of the North Dakota Century Code is created and enacted as follows:

#### Smaller subsurface water management systems - Notification and conditions - Penalty.

1. A person may not install a subsurface water management system comprising less than eighty acres [32.37 hectares] of land area until the person has notified the board of the water resource district within which is found a majority of the land area of the system of the following information:
  - a. The system's total acreage and legal description of the land being drained;
  - b. The outlet locations and types; and
  - c. The flow direction from each outlet location.
2. A person required to notify the board under subsection 1 shall install the subsurface water management system such that:
  - a. Pump and control structures at pump outlets are installed no closer than twenty-five feet [7.62 meters] from the top of the back slope of an assessment drain;
  - b. Proper erosion controls are installed and maintained at all outlets; and
  - c. Pumps and control structures at project outlets are closed or turned off during critical flood periods.
3. If a subsurface water management system for which notification is required under subsection 1 will discharge into the watershed area of an assessment drain, the water resource board that receives the notice may require the relevant property to be included in the assessment district for the assessment drain in accordance with the benefits the property receives, provided the property is not assessed already for the assessment drain. The water resource district also may include the property in the assessment district and determine the benefits and assessment amounts under chapters 61-21 and 61-16.1, without conducting the reassessment of benefit proceedings under sections 61-21-44 and 61-16.1-26, provided the property is not assessed already for the assessment drain.

4. The board of the water resource district within which the subsurface water management system is located may order the system's owner or operator to bring the system into compliance with subsection 2 if the board finds the system violates that subsection.
5. A person that violates this section is guilty of an infraction.
6. This section applies only to subsurface water management systems that drain, in whole or in part, platted or unplatted lands used for raising agricultural crops or grazing farm animals.
7. This section does not apply to a subsurface water management system that discharges into a body of water completely encompassed by land owned by the person that owns the land drained by the system.
8. The information that must be provided to a board of a water resource district under this section is an exempt record under section 44-04-18.

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

Approved April 27, 2023

Filed April 28, 2023

## CHAPTER 577

### SENATE BILL NO. 2196

(Senators Patten, Beard, Bekkedahl, Kannianen)  
(Representatives J. Olson, Richter)

AN ACT to create and enact two new sections to chapter 61-40 of the North Dakota Century Code, relating to the infrastructure revolving loan fund and accrued and unpaid interest in western area water supply authority loans; to amend and reenact subsection 13 of section 61-40-05, and sections 61-40-09, 61-40-10, and 61-40-11 of the North Dakota Century Code, relating to the oversight of the western area water supply authority and infrastructure revolving loan fund payments; and to provide an appropriation.

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

**SECTION 1. AMENDMENT.** Subsection 13 of section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

13. Accept from any authorized state or federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and enter agreements with the agency respecting the loans or grants. Other than state-guaranteed loans, additional debt that may form the basis of a claim for territorial or franchise protection for industrial water sales for oil and gas exploration and production may be acquired by the authority or member entities only upon approval by the industrialstate water commission and the emergency commission.

**SECTION 2. AMENDMENT.** Section 61-40-09 of the North Dakota Century Code is amended and reenacted as follows:

#### **61-40-09. Default.**

~~The industrial commission may review the ability of water depot and lateral sales to meet expenses in subdivisions a through d of subsection 1 of section 61-40-10, and if the industrial commission is uncertain of that ability, the industrial commission shall provide written notification to the state water commission and direct the Bank of North Dakota to consider revision of the terms of the loan repayments. If the authority is in default in the payment of the principal or interest on the obligation to the Bank of North Dakota for a loan for which the Bank of North Dakota is the source of funds for the loan, the state water commission shall request funding from the legislative assembly to repay the principal and interest due if the western area water supply authority defaults on its payment of the principal or interest on the infrastructure revolving loan provided for in section 5 of this Act, the Bank of North Dakota shall notify the legislative council, and the state water commission shall provide a payment, subject to budget section approval, to the Bank of North Dakota in an amount of the default as certified to the budget section by the Bank of North Dakota.~~

**SECTION 3. AMENDMENT.** Section 61-40-10 of the North Dakota Century Code is amended and reenacted as follows:

#### **61-40-10. Industrial water depot and lateral sales.**

1. An accounting of industrial water depot and lateral sales collected and distributed by the authority must be reported to the ~~industrial~~state water commission on a monthly basis. Participating member entities shall transfer industrial water depot and lateral sales to the authority within thirty days of receipt of the revenues. The boards of the authority and participating member entities must be notified of the sweep of revenues; however, board approval is not required. Upon the receipt of industrial water depot and lateral revenues by the authority, the authority shall apply immediately all revenues each month in the following order:
  - a. ~~One hundred fifty thousand dollars per biennium to the industrial commission for one additional full-time equivalent position to implement this section.~~
  - b. Reimburse the authority for industrial water depot capital improvements and the cost for delivery of potable or nonpotable water sold at industrial water depots and lateral lines, at a cost no greater than the participating member, or submember, if applicable, entity rate at the location of the depot or lateral line.
  - e-b. Regular payments on the participating member entity debt as described in the agreements with the authority as of March 31, 2013, and baseline 2010 industrial water sales included in and subject to the terms of the authority and participating member agreements as of March 31, 2013. Baseline 2010 industrial water sales for the city of Tioga in the year 2013 are limited to the lesser of legally permitted industrial water sales or the amount in the member agreement.
  - e-c. Required monthly payments on state-guaranteed loans. The required transfer must occur no later than the twentieth day of the following month.
  - e-d. Additional principal payment on state-guaranteed loans.
  - f-e. Payment to the resources trust fund.
2. If the ~~state-guaranteed loans have~~debt has not been repaid, without the written consent of the ~~industrial~~state water commission the authority may not sell, lease, abandon, encumber, or otherwise dispose of any part of the property used in a water system of the authority if the property is used to provide revenue. Any requirements on the state-guaranteed loans for establishment of reserve funds for operation and maintenance or debt service are waived.
3. ~~The state water commission shall approve the planning, location, and water supply contracts of any authority depots, laterals, taps, turnouts, and risers for industrial sales for oil and gas exploration and production after July 1, 2013~~western area water supply authority shall make additional payments on the infrastructure revolving fund loan, authorized in section 5 of this Act, in any month in which the debt service coverage ratio exceeds one and one-tenth. Debt service coverage ratio means net income before capital expenditures, interest expense, and depreciation expense divided by the sum of interest expenses and the required principal and interest payment.

**SECTION 4. AMENDMENT.** Section 61-40-11 of the North Dakota Century Code is amended and reenacted as follows:

**61-40-11. Water rates.**

~~The industrial commission may authorize the authority to contract at competitive, floating, market rates for industrial water depot and lateral retail sales. The authority shall provide a report on the rates to the commission and legislative management's water topics overview committee on a regular basis. The authority shall develop domestic water rates that must include all costs for operation, maintenance, and operating and capital reserves, and debt repayment of all infrastructure managed or constructed by the authority, with the exception of the costs identified in section 61-40-10 which are paid for by industrial water depot and lateral sales.~~

**SECTION 5.** A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

**Western area water supply authority - Bank of North Dakota loan - Transfer.**

The Bank of North Dakota shall transfer the outstanding principal balance of the consolidation loan authorized in section 9 of chapter 19 of the 2017 Session Laws to the infrastructure revolving loan fund, on August 1, 2023. Any accrued and unpaid interest of the consolidation loan authorized in section 9 of chapter 19 of the 2017 Session Laws must be consolidated with the principal balance of the loan transferred to the infrastructure revolving loan fund. The loan must have an interest rate of two percent and a final maturity date not to extend beyond July 1, 2053.

**SECTION 6.** A new section to chapter 61-40 of the North Dakota Century Code is created and enacted as follows:

**Western area water supply authority accrued and unpaid interest.**

All accrued and unpaid interest on the twenty-five million dollar loan from the general fund to the western area water supply authority authorized in section 3 of chapter 500 of the 2011 Session Laws must be transferred to the general fund. All accrued and unpaid interest on the ten million dollar, twenty million dollar, and nineteen million five hundred thousand dollar loans from the resources trust fund to the western area water supply authority must be forgiven.

**SECTION 7. APPROPRIATION - DEPARTMENT OF WATER RESOURCES - RESOURCES TRUST FUND.** There is appropriated out of any moneys in the resources trust fund in the state treasury, not otherwise appropriated, the sum of \$2,000,000, or so much of the sum as may be necessary, to the department of water resources for the purpose of paying accrued and unpaid interest on the \$25,000,000 loan from the general fund to the western area water supply authority authorized in section 3 of chapter 500 of the 2011 Session Laws, for the biennium beginning July 1, 2023, and ending June 30, 2025.

Approved April 29, 2023

Filed May 1, 2023



# WEAPONS

## CHAPTER 578

### HOUSE BILL NO. 1339

(Representatives Koppelman, Cory, Henderson, Mock, Novak, M. Ruby)  
(Senators Boehm, Hogue, Larson, Meyer, Myrdal, K. Roers)

AN ACT to amend and reenact sections 62.1-02-10, 62.1-03-01, 62.1-04-02, 62.1-04-03, and 62.1-04-04 of the North Dakota Century Code, relating to carrying a loaded firearm in a vehicle, carrying a handgun, carrying a concealed firearm, a license to carry a concealed firearm, and producing a license upon request; to repeal section 2 of chapter 499 of the 2021 Session Laws, relating to a contingent expiration date for concealed weapon provisions; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 62.1-02-10 of the North Dakota Century Code is amended and reenacted as follows:

#### **62.1-02-10. Carrying loaded firearm in certain vehicles prohibited - Penalty - Exceptions.**

An individual may not keep or carry a loaded firearm in or on any motor vehicle, including an off-highway vehicle or snowmobile in this state. An individual violating this section is guilty of an infraction. This prohibition does not apply to:

1. A member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations while possessing the firearm issued to the member by the organization and while on official duty.
2. A law enforcement officer.
3. An individual possessing a valid concealed weapons license from this state or who has reciprocity under section 62.1-04-03.1 with a handgun.
4. An individual who possesses a rifle or shotgun, is not in the field hunting or trapping, and possesses a valid concealed weapons license from this state or has reciprocity under section 62.1-04-03.1.
5. An individual in the field engaged in lawful hunting or trapping of nongame species or fur-bearing animals.
6. A security guard or private investigator properly licensed to carry firearms.
7. An individual possessing a valid special permit issued pursuant to section 20.1-02-05.

8. An individual with a handgun who is not otherwise precluded from possessing a class 2 firearm and dangerous weapon license under chapter 62.1-04 and who ~~has possessed for at least thirty days~~possesses a valid driver's license or nondriver identification card issued by the department of transportation or by the individual's state or territory of residence.
9. An individual who possesses a rifle or shotgun, is not in the field hunting or trapping, and is not otherwise precluded from possessing a class 2 firearm and dangerous weapon license under chapter 62.1-04 and ~~has possessed for at least thirty days~~possesses a valid driver's license or nondriver identification card issued by the department of transportation or by the individual's state or territory of residence.

**SECTION 2. AMENDMENT.** Section 62.1-03-01 of the North Dakota Century Code is amended and reenacted as follows:

**62.1-03-01. Carrying handgun - Limitations - Exceptions.**

1. Unless otherwise prohibited by law, an individual may carry a handgun if the handgun is unloaded and in plain view or secured.
2. A limitation under subsection 1 does not apply to:
  - a. An individual possessing a valid concealed weapons license from this state, an individual not otherwise precluded from possessing a class 2 firearm and dangerous weapon license under chapter 62.1-04 and who ~~has possessed for at least thirty days~~possesses a valid driver's license or nondriver identification card issued by the department of transportation; or by the individual's state or territory of residence. or an individual who has reciprocity under section 62.1-04-03.1.
  - b. An individual on that person's land, or in that individual's permanent or temporary residence, or fixed place of business.
  - c. An individual while lawfully engaged in target shooting.
  - d. An individual while in the field engaging in the lawful pursuit of hunting or trapping. However, nothing in this exception authorizes the carrying of a loaded handgun in a motor vehicle.
  - e. An individual permitted by law to possess a firearm while carrying the handgun unloaded and in a secure wrapper from the place of purchase to that person's home or place of business, or to a place of repair or back from those locations.
  - f. Any North Dakota law enforcement officer.
  - g. Any law enforcement officer of any other state or political subdivision of another state who possesses active law enforcement credentials.
  - h. Any armed security guard or investigator as authorized by law when on duty or going to or from duty.
  - i. Any member of the armed forces of the United States when on duty or going to or from duty and when carrying the handgun issued to the member.

- j. Any member of the national guard, organized reserves, state defense forces, or state guard organizations, when on duty or going to or from duty and when carrying the handgun issued to the member by the organization.
- k. Any officer or employee of the United States duly authorized to carry a handgun.
- l. An individual engaged in manufacturing, repairing, or dealing in handguns or the agent or representative of that individual possessing, using, or carrying a handgun in the usual or ordinary course of the business.
- m. Any common carrier, but only when carrying the handgun as part of the cargo in the usual cargo carrying portion of the vehicle.

**SECTION 3. AMENDMENT.** Section 62.1-04-02 of the North Dakota Century Code is amended and reenacted as follows:

**62.1-04-02. Carrying concealed firearms or dangerous weapons - License distinctions.**

1. An individual, other than a law enforcement officer, may not carry a firearm or dangerous weapon concealed unless the individual is licensed to do so or exempted under this chapter.
2. An individual who is not otherwise precluded from possessing a class 2 firearm and dangerous weapon license under this chapter and who ~~has possessed for at least thirty days~~ possesses a valid driver's license or nondriver identification card issued by the department of transportation or by the individual's state or territory of residence may carry a firearm concealed under this chapter.
3. An individual may carry a firearm concealed under this chapter if the individual qualifies for reciprocity under section 62.1-04-03.1 and the individual has the equivalent of a class 2 firearm and dangerous weapon license from the state in which the individual is a resident.
4. For purposes of this chapter, the difference between a class 1 and class 2 firearm and dangerous weapon license is only the extent to which a holder of either license may be eligible to receive reciprocal rights in other jurisdictions. A class 1 firearm and dangerous weapon licenseholder is eligible to receive reciprocal rights in more jurisdictions than a class 2 firearm and dangerous weapon licenseholder. The rights and privileges conveyed by a class 1 or class 2 firearm and dangerous weapon license within the state are identical.

**SECTION 4. 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 - Class 1 firearm license and class 2 firearm and dangerous weapon license. (Contingent expiration date - [See note](#))**

1. The 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 director if the following criteria are met:

- a. The applicant is at least twenty-one years of age for a class 1 firearm license or at least eighteen years of age for a class 2 firearm and dangerous weapon license;
- b. The applicant can demonstrate that the applicant is a resident of this state by providing a copy of a valid driver's license or state-issued identification card from this state that establishes personal identification through photographic means and shows the applicant's name associated with a valid residential street address in this state or the applicant possesses a valid driver's license or nondriver identification from the applicant's state or territory of residence that establishes personal identification through photographic means and shows the applicant's name associated with a valid residential street address and a valid concealed weapons license from the applicant's state of residence, which state has reciprocity with this state under section 62.1-04-03.1;
- c. The applicant is not an individual specified in section 62.1-02-01 and for a class 1 firearm license the applicant:
  - (1) Has not been convicted of a felony;
  - (2) Has not been convicted of a crime of violence;
  - (3) Has not been convicted of an offense involving the use of alcohol within three years prior to the date of application;
  - (4) Has not been convicted of a misdemeanor offense involving the unlawful use of narcotics or other controlled substances within ten years prior to the date of application;
  - (5) Has not been convicted of an offense involving moral turpitude;
  - (6) Has not been convicted of an offense involving domestic violence;
  - (7) Has not been adjudicated by a state or federal court as mentally incompetent, unless the adjudication has been withdrawn or reversed; and
  - (8) Is qualified to purchase and possess a firearm under federal law;
- d. The applicant has successfully completed the testing procedure conducted by a certified test administrator. The person conducting the testing may assess a charge of up to fifty dollars for conducting this testing. The attorney general may certify a test administrator based upon criteria and guidelines prescribed by the director of the bureau of criminal investigation;
- e. The applicant satisfactorily completes the bureau of criminal investigation application form and has successfully passed the criminal history records check conducted by the bureau of criminal investigation and the federal bureau of investigation. The applicant shall provide all documentation relating to any court-ordered treatment or commitment for mental health or substance abuse. The applicant shall provide the director of the bureau of criminal investigation written authorizations for disclosure of the applicant's mental health or substance abuse evaluation and treatment records. The

- bureau may deny approval for a license if the bureau has reasonable cause to believe that the applicant or licenseholder has been or is a danger to self or others as demonstrated by evidence, including past pattern of behavior involving unlawful violence or threats of unlawful violence; past participation in incidents involving unlawful violence or threats of unlawful violence; or conviction of a weapons offense. In determining whether the applicant or licenseholder has been or is a danger to self or others, the bureau may inspect expunged or sealed records of arrests and convictions of adults and juvenile court records; and
- f. The applicant is not prohibited under federal law from owning, possessing, or having a firearm under that individual's control.
2. The attorney general shall offer class 1 firearm and class 2 firearm and dangerous weapon licenses to carry a firearm or dangerous weapon concealed under the following requirements:
    - a. An applicant for a class 1 firearm 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, and complete an actual shooting or certified proficiency exercise. Evidence of familiarity with a firearm to be concealed may be satisfied by one of the following:
      - (1) Certification of familiarity with a firearm by an individual who has been certified by the attorney general, which may include a law enforcement officer, military or civilian firearms instructor, or hunter safety instructor;
      - (2) Evidence of equivalent experience with a firearm through participation in an organized shooting competition, law enforcement, or military service;
      - (3) Possession of a license from another state to carry a firearm, 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.
    - b. An applicant for a class 2 firearm and dangerous weapon license is required to successfully complete the open book test offered for the class 1 firearm license.
    - c. A North Dakota resident who has a valid class 1 firearm license also may carry a class 2 dangerous weapon without any further testing required. Class 1 and class 2 permits are equally valid in this state.
    - d. Additional testing is not required to renew a class 2 firearm and dangerous weapon license. A class 1 firearm license may be renewed upon successful completion of the class 1 firearm requirements within thirty days before submission of the application for renewal.
    - e. An individual who has a valid class 2 firearm license may apply to upgrade to a class 1 firearm license within five years from the date the class 2 firearm license was issued and upon successful completion of the

- requirements under this chapter. An individual who has a valid class 1 firearm license may request to convert the license to a class 2 firearm license before the expiration of the class 1 firearm license.
3. The director of the bureau of criminal investigation shall send by mail to a holder of a license a notice of the procedures for renewal of the license issued under this section. The director shall give the notice at least one hundred fifty days but not more than one hundred eighty days before the expiration of the license.
  4. The bureau of criminal investigation is required to process the application and make a determination within sixty days of receipt of the properly completed application.
  5. The fee for a concealed weapons license must be credited to the attorney general's operating fund. All fees must be paid before the license application may be processed by the director of the bureau of criminal investigation. The attorney general shall list the fees associated with the license, including the costs of the fingerprint-based federal criminal history record check, in the attorney general's administrative rules.
  6. The 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 criminal history record check and be accompanied by:
    - a. A photocopy of a valid driver's license or identification card issued by this state which establishes personal identification through photographic means and shows the applicant's name associated with a valid residential street address in this state or a valid state-issued driver's license or nondriver identification from the applicant's state or territory of residence which establishes personal identification through photographic means and shows the applicant's name associated with a valid residential street address and a valid concealed weapons license from the applicant's state of residence, which has reciprocity with this state under section 62.1-04-03.1; and
    - b. 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 five years. The original license must be delivered to the licensee and an electronic copy must be preserved for six years by the director. Access to license information must be available to law enforcement through electronic means for official law enforcement purposes. The applicant or licenseholder shall notify the 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.
  7. The 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. The director of the bureau of criminal investigation shall disclose to the applicant the specific reason for denial or revocation of the license.

8. The applicant may appeal a denial or revocation of this license to the district court of Burleigh County.
9. 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.
10. The attorney general may adopt any rules necessary to implement this title.

**~~License to carry a firearm or dangerous weapon concealed – Class 1 firearm license and class 2 firearm and dangerous weapon license.~~**

1. ~~The 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 director if the following criteria are met:~~
  - a. ~~The applicant is at least twenty-one years of age for a class 1 firearm license or at least eighteen years of age for a class 2 firearm and dangerous weapon license;~~
  - b. ~~The applicant can demonstrate that the applicant is a resident of this state by providing a copy of a valid driver's license or state-issued identification card from this state that establishes personal identification through photographic means and shows the applicant's name associated with a valid residential street address in this state or the applicant possesses a valid driver's license from the applicant's state of residence that establishes personal identification through photographic means and shows the applicant's name associated with a valid residential street address and a valid concealed weapons license from the applicant's state of residence, which state has reciprocity with this state under section 62.1-04-03.1;~~
  - c. ~~The applicant is not an individual specified in section 62.1-02-01 and for a class 1 firearm license the applicant:~~
    - (1) ~~Has not been convicted of a felony;~~
    - (2) ~~Has not been convicted of a crime of violence;~~
    - (3) ~~Has not been convicted of an offense involving the use of alcohol within ten years prior to the date of application;~~
    - (4) ~~Has not been convicted of a misdemeanor offense involving the unlawful use of narcotics or other controlled substances within ten years prior to the date of application;~~
    - (5) ~~Has not been convicted of an offense involving moral turpitude;~~
    - (6) ~~Has not been convicted of an offense involving domestic violence;~~



- ~~(3) Possession of a license from another state to carry a firearm, 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.~~
- ~~b. An applicant for a class 2 firearm and dangerous weapon license is required to successfully complete the open book test offered for the class 1 firearm license.~~
- ~~c. A North Dakota resident who has a valid class 1 firearm license also may carry a class 2 dangerous weapon without any further testing required. Class 1 and class 2 permits are equally valid in this state.~~
- ~~d. Additional testing is not required to renew a class 2 firearm and dangerous weapon license. A class 1 firearm license may be renewed upon successful completion of the class 1 firearm requirements within thirty days before submission of the application for renewal.~~
- ~~e. An individual who has a valid class 2 firearm license may apply to upgrade to a class 1 firearm license within five years from the date the class 2 firearm license was issued and upon successful completion of the requirements under this chapter. An individual who has a valid class 1 firearm license may request to convert the license to a class 2 firearm license before the expiration of the class 1 firearm license.~~
3. The director of the bureau of criminal investigation shall send by mail to a holder of a license a notice of the procedures for renewal of the license issued under this section. The director shall give the notice at least one hundred fifty days but not more than one hundred eighty days before the expiration of the license.
4. The bureau of criminal investigation is required to process the application and make a determination within sixty days of receipt of the properly completed application.
5. The fee for a concealed weapons license must be credited to the attorney general's operating fund. All fees must be paid before the license application may be processed by the director of the bureau of criminal investigation. The attorney general shall list the fees associated with the license, including the costs of the fingerprint based federal criminal history record check, in the attorney general's administrative rules.
6. The 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 criminal history record check and be accompanied by:
  - a. A photocopy of a valid driver's license or identification card issued by this state which establishes personal identification through photographic means and shows the applicant's name associated with a valid residential street address in this state or a valid state-issued driver's license from the applicant's state of residence which establishes personal identification

through photographic means and shows the applicant's name associated with a valid residential street address and a valid concealed weapons license from the applicant's state of residence, which has reciprocity with this state under section 62.1-04-03.1; and

- b. ~~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 five years. The original license must be delivered to the licensee and an electronic copy must be preserved for six years by the director. Access to license information must be available to law enforcement through electronic means for official law enforcement purposes. The applicant or licenseholder shall notify the 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.~~
7. ~~The 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. The director of the bureau of criminal investigation shall disclose to the applicant the specific reason for denial or revocation of the license.~~
  8. ~~The applicant may appeal a denial or revocation of this license to the district court of Burleigh County.~~
  9. ~~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.~~
    - e. ~~Pursuant to a court order or a judicial, legislative, or administrative agency subpoena issued in this state.~~
  10. ~~The attorney general may adopt any rules necessary to implement this title.~~

**SECTION 5. AMENDMENT.** Section 62.1-04-04 of the North Dakota Century Code is amended and reenacted as follows:

**62.1-04-04. Producing license upon request - Penalty.**

1. Every individual while carrying a concealed firearm or dangerous weapon, for which a license to carry concealed is required, shall have on one's person the license issued by this or another state or a digital image of one's concealed firearm or dangerous weapon license issued by this state on an electronic device and shall give it to any active law enforcement officer for an inspection upon request by the officer. The failure of any individual to give the license or digital image of the license to the officer is prima facie evidence the individual is illegally carrying a firearm or dangerous weapon concealed.
2. Every individual carrying a concealed firearm under the authority granted in subsection 2 of section 62.1-04-02 shall inform a law enforcement officer of the individual's possession of a concealed weapon upon the initiation of a

traffic stop or any other in-person contact initiated by a law enforcement officer.

3. Every individual carrying a concealed firearm under the authority granted in subsection 2 of section 62.1-04-02 ~~must~~shall have on one's person a valid driver's license or nondriver identification card issued by the department of transportation ~~or by the individual's state or territory of residence~~, or a digital image of one's valid driver's license or nondriver identification card on a mobile device and shall provide the license or card to any law enforcement officer for inspection upon request by the officer.
4. An individual who violates this section is guilty of a noncriminal offense punishable by a fee of twenty dollars.

**SECTION 6. REPEAL.** Section 2 of chapter 499 of the 2021 Session Laws is repealed.

Approved April 11, 2023

Filed April 12, 2023



# WEIGHTS, MEASURES, AND GRADES

## CHAPTER 579

### HOUSE BILL NO. 1096

(Energy and Natural Resources Committee)  
(At the request of the Public Service Commission)

AN ACT to amend and reenact section 64-02-08.1 of the North Dakota Century Code, relating to permit fees for registered service company and person.

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

**SECTION 1. AMENDMENT.** Section 64-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**64-02-08.1. Fees for registered service companies and to ~~license~~permit and test a registered service person.**

1. Annually, each registered service company shall pay a ~~registration~~permit fee of one hundred dollars ~~and a licensing fee of fifty dollars for each registered service person.~~
2. ~~Annually, each registered service person shall pay a permit fee of fifty dollars.~~
3. The commission may assess a registered service person testing fee not to exceed twenty-five dollars per test.

Approved March 14, 2023

Filed March 15, 2023



# WORKFORCE SAFETY AND INSURANCE

## CHAPTER 580

### SENATE BILL NO. 2214

(Senators Magrum, Boehm)  
(Representatives Christensen, S. Olson)

AN ACT to create and enact a new paragraph to subdivision b of subsection 16 of section 65-01-02 of the North Dakota Century Code, relating to the exclusions from the term employee.

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

<sup>322</sup> **SECTION 1.** A new paragraph to subdivision b of subsection 16 of section 65-01-02 of the North Dakota Century Code is created and enacted as follows:

An athlete participating in a contact sport. As used in this paragraph, "contact sport" means a team or individual competitive athletic activity that includes significant physical contact between the athletes involved. The term includes football and hockey.

**SECTION 2. EFFECTIVE DATE.** This Act is effective through August 31, 2028, and after that date is ineffective.

Approved March 22, 2023

Filed March 23, 2023

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<sup>322</sup> Section 65-01-02 was also amended by section 1 of House Bill No. 1052, chapter 581.

## CHAPTER 581

### HOUSE BILL NO. 1052

(Industry, Business and Labor Committee)  
(At the request of Workforce Safety and Insurance)

AN ACT to amend and reenact paragraph 1 of subdivision b of subsection 11 of section 65-01-02, subsection 4 of section 65-01-16, section 65-04-15, subsection 3 of section 65-04-19, subsections 1 and 3 of section 65-04-27.2, subsection 2 of section 65-04-32, and subsection 10 of section 65-05-32 of the North Dakota Century Code, relating to preventive treatment, requests for reconsideration of claim decisions issued by the organization, providing employer account information, calculation of an employer's premium and creating a presumption of accuracy, an employer conducting business with a known uninsured employer, requests for reconsideration of employer decisions issued by the organization, and privacy of records; and to provide for application.

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

<sup>323</sup> **SECTION 1. AMENDMENT.** Paragraph 1 of subdivision b of subsection 11 of section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

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

**SECTION 2. AMENDMENT.** Subsection 4 of section 65-01-16 of the North Dakota Century Code is amended and reenacted as follows:

4. A party has forty-five days from the day the notice of decision was mailed by the organization ~~in which~~ to file a written request for reconsideration. The request for reconsideration is considered filed only upon receipt by the organization. The employer is not required to file the request through an attorney. The request must state the reason for disagreement with the organization's decision and the desired outcome. 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.

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<sup>323</sup> Section 65-01-02 was also amended by section 1 of Senate Bill No. 2214, chapter 580.

**SECTION 3. 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 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 provide employer file information to another employer, or the authorized representative of another employer, in instances of employer account transfers, in instances of consolidations, and for application of section 65-04-26.2.
5. 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.
6. The organization may provide any state or federal agency, or any law enforcement 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 or law enforcement agency.

- 5-7. 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~~may provide any relevant information to those officials for the purpose of administering their duties.
- 6-8. 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 4. AMENDMENT.** Subsection 3 of section 65-04-19 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~¶The organization may calculate an employer's premium without employer-supplied wages if the organization does not receive the employer's payroll report or, in the case of a noncompliant employer, the organization does not receive reliable and accurate payroll information; the organization may calculate from the employer. The organization's premium calculation using the wage cap in effect per employee reported in the previous payroll report, using information obtained through the organization's investigative process, or using data obtained from job service North Dakota is presumed accurate.~~

**SECTION 5. AMENDMENT.** Subsections 1 and 3 of section 65-04-27.2 of the North Dakota Century Code are amended and reenacted as follows:

1. If it appears to the organization an employer is without workers compensation coverage ~~or, is in an uninsured status in violation of this title, by registered mail or knowingly conducts business with an uninsured employer,~~ the director ~~by registered mail~~ may issue to the employer an order to cease and desist and a notice of opportunity for hearing. Within ~~thirty~~forty-five days ~~of receipt of the~~ ~~from the date of service of the order,~~ a party to the order may make a written request for a hearing. If a hearing is not requested, the order is final and may not be appealed. If a hearing is requested, the hearing must be conducted in accordance with chapter 28-32 to the extent that chapter does not conflict with this section and the order remains in effect until the hearing officer renders a decision. If an employer fails to appear at a hearing requested under this section, that employer defaults and the allegations contained in the cease and desist order are deemed true.
3. A general contractor or a subcontractor that ~~willfully~~knowingly uses the services of a subcontractor precluded from operating under a cease and desist order, ~~or an employer conducting business with an uninsured employer precluded from operating under a cease and desist order,~~ is subject to a penalty of five thousand dollars and one hundred dollars per day for each day the violation occurs. The organization shall provide notice to the general contractor or subcontractor by regular mail before assessing penalties under this section. The organization may reduce the penalties under this section.

**SECTION 6. AMENDMENT.** Subsection 2 of section 65-04-32 of the North Dakota Century Code is amended and reenacted as follows:

2. An employer has forty-five days from the day the notice of decision was mailed by the organization to file a written ~~petition~~request for reconsideration. The request for reconsideration is considered filed only upon receipt by the organization. The employer is not required to file the request through an attorney. The request must state the reason for disagreement with the organization's decision and the desired outcome. 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.

**SECTION 7. AMENDMENT.** Subsection 10 of section 65-05-32 of the North Dakota Century Code is amended and reenacted as follows:

10. The organization may provide any state or federal agency, or any law enforcement agency, any information obtained pursuant to the administration of this title. Any information so provided must be used for the purpose of administering the duties of that state or federal agency or law enforcement agency.

**SECTION 8. APPLICATION.** Section 1 of this Act applies to all claims filed on or after August 1, 2023. Sections 2 and 6 of the Act apply to all requests for reconsideration regardless of the date of decision issued by the organization.

Approved April 26, 2023

Filed April 26, 2023

## CHAPTER 582

### HOUSE BILL NO. 1279

(Representatives Roers Jones, Heinert, Jonas, Louser, Schauer, Thomas)  
(Senators Barta, Larson, Lee)

AN ACT to create and enact section 65-01-15.2 of the North Dakota Century Code, relating to compensability for cardiac events for firefighters and law enforcement officers; to amend and reenact sections 65-01-15 and 65-01-15.1 of the North Dakota Century Code, relating to documentation required for firefighters and law enforcement officers and the presumption of compensability for firefighters and law enforcement officers; to provide for retroactive application; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 65-01-15 of the North Dakota Century Code is amended and reenacted as follows:

**65-01-15. Yearly documentation required for firefighter and law enforcement officer.**

Except for benefits for an exposure to a bloodborne pathogen as defined by section 23-07.5-01 occurring in the course of employment, a full-time paid firefighter or law enforcement officer who uses tobacco is not eligible for the benefits provided under ~~section~~sections 65-01-15.1 and 65-01-15.2, unless the full-time paid firefighter or law enforcement officer provides yearly documentation from a health care provider which indicates the full-time paid firefighter or law enforcement officer has not used tobacco for the preceding two years.

<sup>324</sup> **SECTION 2. AMENDMENT.** Section 65-01-15.1 of the North Dakota Century Code is amended and reenacted as follows:

**65-01-15.1. Presumption of compensability for certain conditions of full-time paid firefighters and law enforcement officers.**

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, is presumed to have been suffered in the line of duty. The presumption may be rebutted by clear and convincing evidence the condition or impairment is not work-related.
2. As used in this section, an occupational cancer is one which arises out of employment as a full-time paid firefighter and is due to injury due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid firefighter.

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<sup>324</sup> Section 65-01-15.1 was also amended by section 2 of Senate Bill No. 2116, chapter 465.

3. A full-time paid firefighter or law enforcement officer is not eligible for the benefit provided under this section unless that full-time paid firefighter or law enforcement officer has completed five years of continuous service and has successfully passed a medical examination which fails to reveal any evidence of such a condition. The five years of continuous service requirement may include full-time paid service outside the state. An employer shall require provide at no expense a medical examination upon employment, for any employee subject to this section.
  - a. After the initial medical examination, an employer shall require provide at no expense at least a periodic medical examination as follows: for one to ten years of service, every five years; for eleven to twenty years of service, every three years; and for twenty-one or more years of service, every year. The periodic medical examination, at a minimum, must consist of a general medical history of the individual and the individual's family; an occupational history including contact with and an exposure to hazardous materials, toxic products, contagious and infectious diseases, and to physical hazards; a physical examination including measurement of height, weight, and blood pressure; and laboratory and diagnostic procedures including a nonfasting total blood cholesterol test indicating cardiovascular health to a reasonable degree of medical certainty.
  - b. If the medical examination reveals that an employee falls into a recognized risk group, the employee must be referred to a qualified health professional for future medical examination.
  - c. If a medical examination produces a false positive result for a condition covered under this section, the organization shall consider the condition to be a compensable injury. In the case of a false positive result, neither the coverage of the condition nor the period of disability may exceed fifty-six days. This section does not affect an employee's responsibility to document that the employee has not used tobacco as required under section 65-01-15. Results of the examination must be used in rebuttal to a presumption afforded under this section.
4. For purposes of this section, "law enforcement officer" means a person an individual who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, a county sheriff's department, a city police department, or the parks and recreation department pursuant to section 55-08-04.
5. The presumption does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed for ten years or less, if the condition or impairment is diagnosed more than two years after the employment as a full-time paid firefighter or law enforcement officer ends. The presumption also does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed more than ten years, if the condition or impairment is diagnosed more than five years after the employment as a full-time paid firefighter or law enforcement officer ends.

<sup>325</sup> **SECTION 3.** Section 65-01-15.2 of the North Dakota Century Code is created and enacted as follows:

**65-01-15.2. Presumption of compensability for cardiac events of full-time paid firefighters and law enforcement officers.**

1. A heart attack, stroke, vascular rupture, or other similar cardiac event, is presumed to be a compensable injury when a full-time paid firefighter or law enforcement officer:
  - a. Engages in a situation involving strenuous physical law enforcement activity, fire suppression activity, or emergency response activity, or participates in a training exercise involving strenuous physical activity; and
  - b. The heart attack, stroke, vascular rupture, or other similar cardiac event occurs no later than forty-eight hours after the full-time paid firefighter or law enforcement officer engaged or participated in the activity listed under subdivision a.
2. The presumption under subsection 1 may be rebutted by clear and convincing evidence the condition or impairment was not work related.
3. This section applies to any full-time paid firefighter or law enforcement officer who has less than five years of continuous service.
4. A full-time paid firefighter or law enforcement officer is not eligible for the benefit provided under this section unless the full-time paid firefighter or law enforcement officer has successfully passed a medical examination that failed to reveal any evidence of a cardiovascular condition.
5. For purposes of this section, "law enforcement officer" means an individual who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full-time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, a county sheriff's department, a city police department, or the parks and recreation department pursuant to section 55-08-04.

**SECTION 4. RETROACTIVE APPLICATION.** This Act applies retroactively to a claim for workers' compensation benefits filed after October 1, 2021, regardless of date of injury. A full-time paid firefighter or law enforcement officer who submitted a claim for benefits between October 1, 2021, and the effective date of this Act may resubmit the claim if the initial claim was denied by the organization for not being a compensable injury.

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

Approved February 6, 2023

Filed February 6, 2023

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<sup>325</sup> Section 65-01-15.2 was amended by section 3 of Senate Bill No. 2116, chapter 465.

## CHAPTER 583

### SENATE BILL NO. 2038

(Legislative Management)  
(Workers' Compensation Review Committee)

AN ACT to repeal section 65-02-30 of the North Dakota Century Code, relating to the quadrennial performance evaluation of workforce safety and insurance.

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

<sup>326</sup> **SECTION 1. REPEAL.** Section 65-02-30 of the North Dakota Century Code is repealed.

Approved March 14, 2023

Filed March 15, 2023

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<sup>326</sup> Section 65-02-30 was amended by section 1 of Senate Bill No. 2040, chapter 584.

## CHAPTER 584

### SENATE BILL NO. 2040

(Legislative Management)  
(Workers' Compensation Review Committee)

AN ACT to amend and reenact section 65-02-30 of the North Dakota Century Code, relating to quadrennial performance evaluation of workforce safety and insurance; and to repeal section 54-35-22 of the North Dakota Century Code, relating to the workers' compensation review committee.

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

<sup>327</sup> **SECTION 1. 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.**

Once every four years, the director shall request the state auditor to select a firm with extensive expertise in workers' compensation practices and standards to complete a performance evaluation of the functions and operations of the organization during that evaluation period. This may not be construed to require the firm to be a certified public accounting firm. The firm's report 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 management's ~~workers' compensation review committee~~ management and to the governor. The director shall provide a copy of the performance evaluation report to the state auditor. Except as otherwise provided in this section, the ~~workers' compensation review committee~~ legislative management may not 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~~ legislative management 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~~ legislative management, 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~~ legislative management 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.

**SECTION 2. REPEAL.** Section 54-35-22 of the North Dakota Century Code is repealed.

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<sup>327</sup> Section 65-02-30 was repealed by section 1 of Senate Bill No. 2038, chapter 583.

Approved March 14, 2023

Filed March 15, 2023

## CHAPTER 585

### SENATE BILL NO. 2039

(Legislative Management)  
(Workers' Compensation Review Committee)

AN ACT to amend and reenact sections 54-57-09 and 65-05.1-06.3 of the North Dakota Century Code, relating to the office of administrative hearings case tracking report to the legislative management and workforce safety and insurance pilot programs status report to the legislative management; and to repeal sections 65-01-19 and 65-03-05 of the North Dakota Century Code, relating to workforce safety and insurance pilot programs and safety grant programs reports to the legislative management.

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

**SECTION 1. AMENDMENT.** Section 54-57-09 of the North Dakota Century Code is amended and reenacted as follows:

##### **54-57-09. Case processing tracking and reporting.**

1. The office of administrative hearings shall track the time elapsed between the date the office receives a file from workforce safety and insurance and the date of the administrative law judge's decision, and monthly calculate a rolling six-month average of time elapsed.
2. The office of administrative hearings shall adopt case processing standards and policies, including provisions intended to meet a goal of an average of two hundred fifteen days or less per case. Administrative law judges have an average of two hundred fifteen days to issue a decision for any injured worker case from the date the office of administrative hearings receives a file from workforce safety and insurance. The date of the last assigned file is the date of assignment for all consolidated files.
3. The office of administrative hearings ~~and workforce safety and insurance~~ shall report statistical information regarding results under the case processing standards and policies to the ~~legislative management and the state advisory council~~ each quarter. The reports must include the information required under subsection 1.

**SECTION 2. AMENDMENT.** Section 65-05.1-06.3 of the North Dakota Century Code is amended and reenacted as follows:

##### **65-05.1-06.3. Rehabilitation services pilot programs --Reports. (Effective after August 31, 2022)**

The organization may 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 injured 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 injured 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 health and 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. ~~The organization shall provide status reports on current pilot programs in accordance with section 65-01-19.~~

**SECTION 3. REPEAL.** Sections 65-01-19 and 65-03-05 of the North Dakota Century Code are repealed.

Approved March 14, 2023

Filed March 15, 2023



# VETOED MEASURES

## CHAPTER 586

### HOUSE BILL NO. 1273

(Representatives Koppelman, Bellew, Heilman, Heinert, Kasper, Louser)  
(Senators Clemens, Larsen, Meyer, Paulson, Vedaa, Wobbema)

AN ACT to create and enact a new section to chapter 16.1-01 of the North Dakota Century Code, relating to the prohibition of ranked-choice and approval voting in elections; and to amend and reenact subsection 7 of section 11-09.1-05 and subsection 9 of section 40-05.1-06 of the North Dakota Century Code, relating to home rule powers.

VETO

April 6, 2023

The Honorable Dennis Johnson  
Speaker of the House  
North Dakota House of Representatives  
State Capitol  
Bismarck, ND

Re: House Bill 1273

Dear Speaker Johnson:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed House Bill 1273 and return it to the House.

House Bill 1273 undermines local control of local political subdivisions exercising their granted powers under home rule charter, specifically prohibiting using an approval voting method or ranked-choice voting method in local elections. This bill also applies restrictions to local elections held by counties, cities and other political subdivisions, regardless of whether they have adopted a home rule charter.

To be clear, under existing law, counties and cities currently do not - and should not - have authority to implement approval voting or ranked-choice methods for state and federal elected office. Home rule authority applies only to local elections.

House Bill 1273 blatantly infringes on local control and the ability of residents in home

rule cities to determine which method of local city election is best for their communities based on the unique aspects of city elections, including those that often have a very large field of candidates elected at-large and not by wards, with no party affiliation and no primary or runoff elections.

Currently, the mantra of "one person, one vote" is often cited in opposition to approval voting. However, in city and county elections using the current plurality voting method in North Dakota, individual voters already often have the opportunity to vote for multiple candidates for two, three, or four seats on a city council or county commission, for example.

Only one political subdivision, the city of Fargo, uses approval voting, having adopted this method through a citywide ballot measure in 2018 approved by 63.5% of those voting on the measure. Ranked-choice voting is not used by any political subdivision in North Dakota.

House Bill 1273 - sponsored by a dozen legislators but none of the 18 legislators who represent Fargo - subverts the will of Fargo residents and overturns the supermajority approval of their 2018 ballot measure five years later.

House Bill 1273 also rolls back the power granted to ill 155 cities - across every North Dakota legislative district - that have adopted a home rule charter under North Dakota Century Code 40-05.1-06 Subsection 9, which states that home rule cities have authority "to provide for all matters pertaining to city elections, except as to qualifications of electors."

Withdrawing this authority after it has already been exercised to carry out the supermajority will of voters is an egregious example of state overreach and demonstrates a lack of respect for local control. Further, instead of taking the opportunity to respect the decision made by over 30,000 Fargo voters and include a grandfather clause in House Bill 1273, the Legislative Assembly is attempting to move the goalposts after the rules were set and legally followed.

To nullify the legitimate votes of tens of thousands of North Dakota citizens and prevent other home rule cities and counties from exercising their home rule authority over elections of their own elected officials is improper and invites legal action against the state.

In North Dakota, we frequently rail against federal overreach that impacts states' rights. If we truly believe in limited government and local control, we can begin by honoring the boundaries, intent and spirit of home rule charters, especially when there is no evidence of any harm having occurred from trusting the residents of cities to have self-determination within the bounds of their home rule charters.

For the reasons stated above, House Bill 1273 is vetoed.  
Sincerely,

Doug Burgum  
Governor

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

**SECTION 1. AMENDMENT.** Subsection 7 of section 11-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

7. Provide for all matters pertaining to county elections, except as to qualifications of electors and the limitations provided in section 2 of this Act.

**SECTION 2.** A new section to chapter 16.1-01 of the North Dakota Century Code is created and enacted as follows:

**Ranked-choice voting - Approval voting - Prohibition.**

1. A ranked-choice voting method that allows voters to rank candidates for an office in order of preference and has ballots cast tabulated in multiple rounds following the elimination of a candidate until a single candidate attains a majority may not be used in determining the election or nomination of any candidate to any local, state, or federal elective office.
2. An approval voting method that allows voters to vote for all the candidates the voter approves of in each race and the candidates receiving the most votes will be elected until all necessary seats are filled in each race may not be used in determining the election or nomination of any candidate to any local, state, or federal elective office.
3. Pursuant to a home rule charter or not, an ordinance enacted or adopted by a county, city, or other political subdivision which is in conflict with this section is void.

**SECTION 3. AMENDMENT.** Subsection 9 of section 40-05.1-06 of the North Dakota Century Code is amended and reenacted as follows:

9. To provide for all matters pertaining to city elections, except as to qualifications of electors and the limitations provided in section 2 of this Act.

Disapproved by the Governor on April 6, 2023.

Filed April 25, 2023

## CHAPTER 587

### HOUSE BILL NO. 1475

(Representatives Koppelman, Grueneich, Louser, Murphy, Pyle, D. Ruby, Schneider,  
Vetter)  
(Senators Paulson, K. Roers)

AN ACT to amend and reenact subdivision i of subsection 1 of section 39-09-02 of the North Dakota Century Code, relating to speed limitations on multilane highways; and to provide a penalty.

VETO

March 29, 2023

The Honorable Dennis Johnson  
Speaker of the House  
North Dakota House of Representatives  
State Capitol  
Bismarck, ND

Re: House Bill 1475

Dear Speaker Johnson:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed House Bill 1475 and return it to the House.

House Bill 1475 increases the maximum speed limit on access-controlled, multilane interstate highways from 75 miles per hour (mph) to 80 mph unless otherwise permitted, restricted or required by conditions.

Increasing the maximum speed limit on interstate highways increases both the risk of speed-related crashes and the potential severity of such crashes. From 2017 to 2021, 178 people died in speed/aggressive driving-related crashes in North Dakota, and speeding or traveling too fast for conditions is a factor in approximately 30% to 40% of all fatal crashes in North Dakota each year. A study by the Insurance Institute of Highway Safety found that a 5 mph increase in the speed limit is associated with an 8.5% increase in fatality rates on interstate highways and freeways.

This increased risk runs counter to the goals of Vision Zero, North Dakota's multi-agency effort to eliminate fatalities and serious injuries caused by motor vehicle crashes. The 98 fatalities from motor vehicle crashes in North Dakota recorded in 2022 was the lowest annual total in 20 years, yet much work remains to improve seat belt usage in our state. In 2022, approximately 2 out of 3 fatalities were unbelted where seat belts were present in the vehicle.

Compared with secondary enforcement laws, primary seat belt laws have been associated with a 10% to 12% higher observed seat belt use rate, according to 2019 data from the National Highway Traffic Safety Administration.

A primary seat belt law is a reasonable and responsible means of mitigating the increased risk of a higher speed limit. In the absence of a primary seat belt law, I am unable to support the heightened risk of an increased speed limit on interstates.

For the reasons stated above, House Bill 1475 is vetoed.

Sincerely,

Doug Bugum  
Governor

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

**SECTION 1. AMENDMENT.** Subdivision i of subsection 1 of section 39-09-02 of the North Dakota Century Code is amended and reenacted as follows:

- i. ~~Seventy-five~~Eighty miles [~~120.70~~128.75 kilometers] an hour on access-controlled, paved and divided, multilane interstate highways, unless otherwise permitted, restricted, or required by conditions.

Disapproved by the Governor on March 29, 2023.

Filed April 25, 2023

## CHAPTER 588

### HOUSE BILL NO. 1532

(Representatives Cory, Kasper, Kempenich, Lefor, Nathe, Porter, Strinden)  
(Senators Beard, Burckhard, Hogue, Meyer, Wobbema)

AN ACT to create and enact chapter 15.1-39 of the North Dakota Century Code, relating to the establishment of an educational reimbursement program; to provide for a legislative management study; to provide for a legislative management report; to provide an appropriation; and to provide an effective date.

VETO

April 21, 2023

The Honorable Dennis Johnson  
Speaker of the House  
North Dakota House of Representatives  
State Capitol  
Bismarck, ND

Re: House Bill 1532

Dear Speaker Johnson:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed House Bill 1532 and return it to the House.

House Bill 1532 appropriates \$10 million in state-collected tax dollars for the purpose of offsetting tuition costs for students attending nonpublic K-12 schools. These dollars would be paid directly to private schools.

Our administration supports school choice and believes that competition can improve outcomes in the K-12 education system, just as competition forces businesses to continually improve their goods and services in order to survive and thrive in a changing economy.

As North Dakota explores a path toward improved outcomes in our K-12 education system, we commend the sponsors and supporters of HB 1532 for championing change and school choice. North Dakota needs school choice for all parents, regardless of income or geography.

However, in its final amended form, this bill is not the comprehensive solution we need. It falls short of meaningfully enhancing school choice – especially in rural areas far from any existing nonpublic schools – and lacks incentives to expand nontraditional options in K-12 education. The bill also lacks public transparency and

accountability standards for the actual use of the proposed tuition offset payments.

Also, this bill as written would not go into effect until July 1, 2024, just six months before the next legislative assembly convenes in regular session. By utilizing the upcoming interim to explore best practices through school choice, competition and innovation in education, we can create a more comprehensive policy that empowers parent choice, improves outcomes for students and provides a greater return on investment of taxpayer dollars. Other states such as Arizona and Iowa have made great strides in passing transformational legislation aimed at producing better outcomes in education. Senate Bill 2284, still pending in the Legislature, would require such a study.

Finally, our objection to this bill is not related to its cost. The state spends 100 times more per year on public schools than is proposed in this bill for tuition offsets for students who attend nonpublic schools – and our K-12 public school system will receive record levels of state funding in the 2023-2025 biennium.

Simply put, HB 1532 does not go far enough to promote competition and expand choice in K-12 education. If not done correctly now, this bill could impede our ability to expand school choice in a meaningful way in the years ahead.

For the reasons stated above, House Bill 1532 is vetoed.

Sincerely,

Doug Burgum  
Governor

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

**SECTION 1.** Chapter 15.1-39 of the North Dakota Century Code is created and enacted as follows:

### **15.1-39-01. Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. "Parent" means a resident of this state who is a parent, conservator, legal guardian, custodian, or other individual with legal authority to act on a program participant's behalf.
2. "Program" means the educational reimbursement program created under this chapter.
3. "Program participant" means an eligible child participating in the program.
4. "Public school" means a public school in this state which serves students in any grade from kindergarten through grade twelve.
5. "Qualified education expenses" means the cost of tuition for a program participant to enroll in or attend a qualified school.

6. "Qualified school" means a nonpublic school in the state which accepts program funds, not including a home school.

**15.1-39-02. Educational reimbursement program establishment.**

1. The superintendent of public instruction shall establish and administer an educational reimbursement program to reimburse qualified schools for qualified education expenses of program participants.
2. To participate in the program:
  - a. The parent of an eligible child shall request a program form for the school year from a qualified school in which the eligible child is enrolled; and
  - b. Upon receiving the parent's program form, the qualified school shall:
    - (1) Certify to the superintendent of public instruction proof of the eligible child's enrollment at the school; and
    - (2) Request program funds for the eligible child's qualified education expenses.
3. For each eligible school program form received, the superintendent of public instruction shall pay to the qualified school in which the eligible program participant is enrolled a sum equivalent to the qualified education expenses, but not more than thirty percent of the per-student payment rate under subsection 3 of section 15.1-27-04.1.
4. A qualified school that receives funds under this chapter shall use the funds to offset the cost of qualified education expenses the program participant or parent otherwise would be obligated to pay. A qualified school may not use funds received under this chapter for any other purpose.
5. If a program participant is enrolled in a qualified school for less than an entire school year, the qualified school must return to the superintendent of public instruction the funding provided under this chapter for that school year, reduced on a prorated basis, to reflect the shorter enrollment period. The superintendent of public instruction shall deposit with the public school district in which the program participant resides any funds returned under this section.

**15.1-39-03. Program participant eligibility.**

A child is eligible for the program if the child is:

1. Eligible to attend public school;
2. Enrolled in a qualified school for any grade from kindergarten through grade twelve; and
3. Documented as a child who is a dependent in a family with gross taxable income of less than five hundred percent of the federal poverty level.

**15.1-39-04. Superintendent of public instruction duties - Rules.**

In administering the program, the superintendent of public instruction:

1. Shall develop procedures and forms necessary to implement the program.
2. Shall use a standardized enrollment form to determine a qualified school's and child's eligibility for the program and make the form readily available to the public.

#### **15.1-39-05. Program suspension.**

The superintendent of public instruction shall suspend a qualified school from the program for failure to comply with applicable law or the program's requirements. The superintendent of public instruction shall notify the school in writing that the school's participation in the program is suspended. The notification must specify the grounds for the suspension and state the school has ten business days to respond and take any corrective action ordered by the superintendent of public instruction. Following the expiration of the ten-day period, the superintendent of public instruction shall:

1. Declare the school ineligible for the program;
2. Order temporary reinstatement of the school's participation in the program, conditioned on the performance of specified action by the school; or
3. Order full reinstatement of the school's participation in the program.

#### **15.1-39-06. Fraudulent use of funds - Referral to attorney general.**

If the superintendent of public instruction obtains evidence of fraudulent use of program funds, the superintendent shall refer the matter to the attorney general for investigation and prosecution.

#### **15.1-39-07. Limitation on regulation of qualified schools.**

1. The program does not expand the regulatory authority of the superintendent of public instruction, a school district, or any other government agency to impose additional regulations on a qualified school under the program beyond what is necessary by the superintendent of public instruction to enforce the program's financial and administrative requirements. The superintendent of public instruction or a school district may not regulate a qualified school's educational program under the program.
2. A qualified school may not be required to alter the school's creed, practices, admissions policy, or curriculum to receive reimbursement for qualified education expenses.
3. The state auditor shall audit program funds disbursed to a qualified school.

#### **15.1-39-08. Educational reimbursement program expenditures - Report.**

On or before September 25, 2025, and annually each year thereafter, the superintendent of public instruction shall report to the legislative management any educational reimbursement program expenditures and supporting data.

### **SECTION 2. LEGISLATIVE MANAGEMENT STUDY - FUNDING OF NONPUBLIC SCHOOLS.**

1. During the 2023-24 interim, the legislative management shall study the funding of nonpublic schools. The study must include:

- a. An evaluation of how other states fund nonpublic schools, including accountability and oversight methods;
  - b. A comparison of funding based on need versus funding every student;
  - c. An evaluation of the impact funding nonpublic schools would have on equity related to rural schools and students affected by federal education regulations;
  - d. A review of the number of students denied admission or attendance by nonpublic schools;
  - e. An evaluation of the impact funding nonpublic schools would have on constitutionally obligated budgets;
  - f. A review of the impacts and benefits of enrolling qualified nonpublic teachers and administrators into the teachers' fund for retirement, including an actuarial study and fund impact; and
  - g. Methods of providing school choice options for any family, including families in rural communities, by identifying underlying challenges and options for collaboration across school types and collecting data to identify trends in school choice by geography.
2. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 3. APPROPRIATION - DEPARTMENT OF PUBLIC INSTRUCTION - EDUCATIONAL REIMBURSEMENT PROGRAM.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$10,000,000, or so much of the sum as may be necessary, to the department of public instruction for the purpose of establishing an educational reimbursement program, for the biennium beginning July 1, 2023, and ending June 30, 2025.

**SECTION 4. EFFECTIVE DATE.** Section 1 of this Act becomes effective on July 1, 2024.

Disapproved by the Governor on April 21, 2023.

Filed April 28, 2023

## CHAPTER 589

### SENATE BILL NO. 2231

(Senators Luick, Meyer)  
(Representatives Cory, Karls)

AN ACT to create and enact sections 14-02.4-03.1 and 15.1-06-21 of the North Dakota Century Code, relating to preferred pronoun discriminatory practices and school policies on expressed gender.

VETO

March 30, 2023

The Honorable Tammy Miller  
President of the Senate  
North Dakota Senate Chambers  
State Capitol  
Bismarck, ND

Re: Senate Bill 2231

Dear President Miller:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Senate Bill 2231 and return it to the Senate.

Section 1 of Senate Bill 2231 codifies First Amendment protections against compelled speech, setting state policy addressing pronoun use by state employees. However, vetoing Section 1 changes nothing, because under existing free speech protections, a state employee already cannot be required to use preferred pronouns but may still voluntarily do so. I would have no objections to signing this bill if it contained only Section 1.

Section 2 infringes on local control by unnecessarily injecting the state into rare instances most appropriately handled at the parent, teacher and school district level. This section removes discretion from school boards, schools and teachers in determining how to accommodate the needs of all students in public schools. Further, the First Amendment already prohibits compelled speech and protects teachers from speaking contrary to their beliefs, and courts across the country have upheld these rights.

Ambiguity throughout this bill would invite lawsuits and put teachers in the precarious position of trying to determine how to refer to students without violating law. The teaching profession is challenging enough without the heavy hand of state government forcing teachers to take on the role of pronoun police. Parents, teachers

and administrators using compassion, empathy and common sense can address individual and infrequent situations that may arise.

At the end of the day, children are the future of our state, and we have a duty to protect all of them. North Dakota will continue to stand for free speech, local control and freedom from discrimination.

For the reasons stated above, Senate Bill 2231 is vetoed.

Sincerely,

Doug Burgum  
Governor

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

**SECTION 1.** Section 14-02.4-03.1 of the North Dakota Century Code is created and enacted as follows:

**14-02.4-03.1. Preferred pronoun - Government entity.**

1. Unless required by law, a government entity may not require an employee to:
  - a. Use an individual's preferred pronoun when addressing or mentioning the individual in work-related communications.
  - b. Designate the employee's preferred pronoun in work-related communications.
2. An individual may assert a violation of this section as a claim or defense in a judicial proceeding and obtain appropriate relief, including costs and reasonable attorney's fees.

**SECTION 2.** Section 15.1-06-21 of the North Dakota Century Code is created and enacted as follows:

**15.1-06-21. School policy - Expressed gender.**

1. As used in this section:
  - a. "Expressed gender" means a gender identity, whether expressed through behavior, clothing, mannerisms, preferred pronoun, or physical characteristics, which does not conform to the student's sex; and
  - b. "Sex" means the biological state of being male or female, based on sex organs, chromosomes, and endogenous hormone profiles existing at the time of birth.
2. Unless otherwise required by law, a board of a school district, a public school, or a teacher in a public school may not:
  - a. Adopt a policy or practice regarding expressed gender:

- b. Provide or authorize classroom instruction recognizing expressed gender; or
  - c. Provide or require professional development recognizing expressed gender.
3. When required by federal law, a board of a school district, a public school, or a teacher in a public school may adopt a policy concerning a specific student's expressed gender or preferred pronoun if the policy is made in consultation with, and with the approval of, the student's parents or guardians. Notwithstanding this subsection, unless otherwise required by federal law, a teacher in a public school is not required to use a student's preferred pronoun when referring to the student if the preferred pronoun is inconsistent with the student's sex.
4. This section does not prohibit a public school teacher from using a student's preferred pronoun that is inconsistent with the student's sex if the teacher has consulted with, and received approval from, the student's parent or guardian and the school administrator.

Disapproved by the Governor on March 30, 2023.

Filed April 24, 2023

## CHAPTER 590

### SENATE BILL NO. 2360

(Senators Boehm, Beard, Hogue, Paulson, Wobbema)  
(Representative Kasper)

AN ACT to create and enact a new subsection to section 12.1-27.1-01 and a new section to chapter 12.1-27.1 of the North Dakota Century Code, relating to the definition of a public library and required safety policies and technology protection measures; to amend and reenact subsection 5 of section 12.1-27.1-01, sections 12.1-27.1-03.1, and 12.1-27.1-11 of the North Dakota Century Code, relating to obscenity control; to provide a penalty; and to provide for application.

### VETO

April 26, 2023

The Honorable Tammy Miller  
President of the Senate  
North Dakota Senate Chambers  
State Capitol  
Bismarck, ND

Re: Senate Bill 2360

Dear President Miller:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Senate Bill 2360 and return it to the Senate.

Protecting children from explicit sexual material is common sense, and I have signed House Bill 1205, which prohibits books containing explicit sexual material from being kept in the children's collection at public libraries. House Bill 1205 also standardizes the process for local public libraries to review material when requested by parents, library users or other members of the public – a process already in place and working at nearly all public libraries across the state.

Senate Bill 2360, on the other hand, creates an enormous burden for our 84 local public libraries and hundreds of K-12 school libraries by imposing, through the threat of criminal prosecution, a de facto requirement that libraries conduct an expensive review of library materials that have already been through a screening process to protect young people from objectionable material.

While some will argue that such a review isn't necessary because the bill states that a librarian must "willfully" display explicit sexual material in order to be in violation of the law, librarians cannot reasonably be expected to take their chances with what's

currently displayed on the shelves and assume the risk of criminal prosecution based on that subjective standard.

For their own legal protection, librarians will understandably want to review every word and image of every book, magazine, video and other piece of material to ensure it conforms to the law's standards. Senate Bill 2360 goes too far in criminalizing potential disagreements over what constitutes material that is harmful to minors, based on the bill's subjectivity.

Senate Bill 2360 also fails to provide an appropriation to cover the considerable expense of this review process, making this an unfunded mandate that local and school libraries are ill-equipped to afford and manage.

A fiscal note prepared by the North Dakota State Library stated that the bill would require the implementation of a statewide authentication system for access to databases, at a cost of \$300,000 initially and \$150,000 per year in annual, ongoing subscription costs. While the State Library was ultimately exempted from the bill's requirements, its fiscal note outlined numerous, substantial costs for local libraries to comply with the bill, including additional staff, extra cataloging and new software systems. Exempting the State Library and excluding private school K-12 libraries from having to comply with this bill creates further inequities.

America is built on a foundation of freedom of speech, the free exchange of ideas and the freedom from government interference to read – or not to read – books that share ideas and stories across the spectrum of human nature and experience.

The best way we protect our youth is through involved and caring parents making decisions in the best interests of their children, whether at home, online or in a public or school library – not with unfunded, one-size-fits-all government mandates.

For the reasons stated above, Senate Bill 2360 is vetoed.

Sincerely,

Doug Burgum  
Governor

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

**SECTION 1. AMENDMENT.** Subsection 5 of section 12.1-27.1-01 of the North Dakota Century Code is amended and reenacted as follows:

5. As used in this chapter, the terms "obscene material" and "obscene performance" mean material or a performance which:
  - a. Taken as a whole, the average person, applying contemporary North Dakota standards, would find predominantly appeals to a prurient interest;
  - b. Depicts or describes in a patently offensive manner sexual conduct, whether normal or perverted; and

- c. Taken as a whole, the reasonable person would find lacking in serious literary, artistic, political, or scientific value.

Whether material or a performance is obscene must be judged with reference to ordinary reasonable adults, unless it appears from the character of the material or the circumstances of its dissemination that the material or performance is designed for minors or other specially susceptible audience, in which case the material or performance must be judged with reference to that type of audience.

**SECTION 2.** 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, the term "public library" means a library containing collections of books or periodicals for the general population to read, borrow, or refer to which is supported with funds derived from taxation.

**SECTION 3. AMENDMENT.** Section 12.1-27.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-27.1-03.1. Objectionable materials or performance - Display to minors - Definitions - Penalty.**

1. A person is guilty of a class B misdemeanor if ~~he~~the person willfully displays at newsstands or any other business establishment frequented by minors, or where minors are or may be invited as a part of the general public, any photograph, book, paperback book, pamphlet, or magazine, the exposed cover or available content of which either contains explicit sexual material that is harmful to minors or exploits, is devoted to, or is principally made up of depictions of nude or partially denuded human figures posed or presented in a manner to exploit sex, lust, or perversion for commercial gain.
2. As used in this section:
  - a. "Explicit sexual material" means any material which:
    - (1) Taken as a whole, appeals to the prurient interest of minors;
    - (2) Is patently offensive under prevailing standards in the adult community in North Dakota as a whole with respect to what is suitable material for minors; and
    - (3) Taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.
  - b. "Nude or partially denuded human figures" means less than completely and opaquely covered human genitals, pubic regions, female breasts or a female breast, if the breast or breasts are exposed below a point immediately above the top of the areola, or human buttocks; and includes human male genitals in a discernibly turgid state even if completely and opaquely covered.
  - b-c. "Where minors are or may be invited as a part of the general public" includes any public roadway or, public walkway, public library, or public school library.

e-d. ~~The above shall may not be construed to include a bona fide school, college, university, museum, public library, or art gallery.~~

**SECTION 4. AMENDMENT.** Section 12.1-27.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-27.1-11. Exceptions to criminal liability.**

Sections 12.1-27.1-01 and 12.1-27.1-03 shall not apply to the possession or distribution of material in the course of law enforcement, judicial, or legislative activities; or to the possession of material by a ~~bona fide school, college, university, museum, or public library~~ for limited access for educational research purposes carried on at such an institution by adults only. Sections 12.1-27.1-01 and 12.1-27.1-03 shall also not apply to a person who is returning material, found to be obscene, to the distributor or publisher initially delivering it to the person returning it.

**SECTION 5.** A new section to chapter 12.1-27.1 of the North Dakota Century Code is created and enacted as follows:

**Safety policies and technology protection measures required - Report - Penalty.**

1. A school district, state agency, or public library may offer digital or online library database resources to students in kindergarten through twelfth grade if the person providing the resources verifies all the resources comply with subsection 2.
2. Digital or online library database resources offered by a school district, state agency, or public library to students in kindergarten through twelfth grade must have safety policies and technology protection measures that:
  - a. Prohibit and prevent a user of the resource from sending, receiving, viewing, or downloading materials constituting an obscene performance or explicit sexual material; and
  - b. Filter or block access to explicit sexual material.
3. Notwithstanding any contract provision, if a provider of digital or online library resources fails to comply with subsection 2, the school district, state agency, or public library shall withhold any further payments to the provider pending verification of compliance.
4. If a provider of digital or online library database resources fails to timely verify the provider is in compliance with the safety policies and requirements of subsection 2, the school district, state agency, or public library shall consider the provider's act of noncompliance a breach of contract.
5. A public school library and a public library shall submit an aggregate written report to the legislative management no later than December first of each year regarding any issues related to provider compliance with technology protection measures required by subsection 2.
6. An employee of a school district, state agency, or public library who willfully exposes explicit sexual material to a minor in violation of this section is guilty of a class B misdemeanor.

7. As used in this section, the term "public library" or "state agency" does not include the state library.

**SECTION 6. APPLICATION.** Sections 1, 3, and 4 of this Act do not apply to the state library.

Disapproved by the Governor on April 26, 2023.

Filed April 28, 2023

## CHAPTER 591

### SENATE BILL NO. 2015

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 appropriation to the office of the governor, legislative assembly, adjutant general, legislative council, department of environmental quality, department of labor and human rights, department of public instruction, department of commerce, department of health and human services, department of career and technical education, and judicial branch; to create and enact a new subsection to section 10-30.5-02 and a new subsection to section 54-44-11 of the North Dakota Century Code, relating to the purpose and use of the North Dakota development fund and a facility management operating fund; to amend and reenact section 15.1-27-04.1 as amended by section 10 of Senate Bill No. 2284, as approved by the sixty-eighth legislative assembly, sections 15.1-36-02 and 15.1-36-04, subsection 2 of the new section to chapter 19-03.1, as created by section 1 of Senate Bill No. 2248, as approved by the sixty-eighth legislative assembly, subsection 1 of section 21-10-12, as amended in section 3 of Senate Bill No. 2330, as approved by the sixty-eighth legislative assembly, section 24-02-37.3, as amended by section 10 of House Bill No. 1012, as approved by the sixty-eighth legislative assembly, sections 48-10-02, 54-06-14.7, and 54-21-19, sections 54-52-02.5, 54-52-02.9, 54-52-02.11, and 54-52-02.12, as amended in sections 3, 4, 5, and 6 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, section 54-52-02.15 as created by section 7 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, section 54-52-03, subsection 2 of section 54-52-06.4, as amended in section 1 of House Bill No. 1309, as approved by the sixty-eighth legislative assembly, subsection 4 of section 54-52-17, as amended in section 4 of House Bill No. 1183, as approved by the sixty-eighth legislative assembly, section 54-52.2-09 as created by section 13 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, subsection 3 of section 54-52.6-01 and section 54-52.6-02 as amended in sections 14 and 15 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, subsection 1 of section 54-52.6-02.1 and section 54-52.6-02.2 as created by sections 16 and 17 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, subsection 2 of section 54-52.6-03 as amended by section 18 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, section 54-52.6-09 as amended in section 22 of House Bill No. 1040, as approved by the sixty-eighth legislative assembly, section 54-63.1-04, and the new subsection to section 61-16.1-11, as created in section 1 of Senate Bill No. 2372, as approved by the sixty-eighth legislative assembly, of the North Dakota Century Code and section 2 of House Bill No. 1438, as approved by the sixty-eighth legislative assembly, relating to baseline funding and the determination of state school aid, loans from the coal development trust fund, evidence of indebtedness, distribution of illegal drugs, legacy fund earnings, the flexible transportation fund, the capitol grounds planning commission spending limit, the state leave sharing program, capitol grounds rent collections, the retirement board, the public employees retirement system retirement plan, the public employees retirement system plan for state peace officers, the clean sustainable energy authority duties, and joint water resource boards; to repeal

section 5 of Senate Bill No. 2020, as approved by the sixty-eighth legislative assembly, relating to a transfer of Bank of North Dakota profits to a water infrastructure revolving loan fund; to provide for a transfer; to provide an exemption; to provide for a legislative management study; to provide a report; to provide a penalty; to provide for application; to provide a retroactive effective date; to provide a contingent effective date; to provide an effective date; and to declare an emergency.

## VETO

May 9, 2023

The Honorable Tammy Miller  
President of the Senate  
North Dakota Senate Chambers  
State Capitol  
Bismarck, ND

Re: Senate Bill 2015

Dear President Miller:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have signed Senate Bill 2015, the Office of Management and Budget appropriations bill, and filed it with the Secretary of State. I also have vetoed items in Sections 30, 32 and 53 of SB 2015.

### Section 30.

Section 30 changes the definition of Legacy Fund "earnings," which was established earlier this session by the Legislature in SB 2330 as an amount equal to 7% of the five-year average of the June 30th value of the Legacy Fund assets as reported by the State Investment Board, calculated every other year on even-numbered years.

The Legacy Fund, our state's permanent endowment fund, is growing rapidly, with a balance of \$8.8 billion at the end of February 2023. The Legacy Fund directly receives 30% of North Dakota oil and gas tax revenue, with the other 70% being invested each biennium on water and road infrastructure, education, human services, local political subdivisions and other priorities that touch the lives of every North Dakotan.

On the last day of session, Section 30 of SB 2015 was added to increase the percentage used in the earnings calculation from 7% to 8%. With this higher percentage, the Legislature would be withdrawing an estimated \$70.5 million in additional Legacy Fund earnings every two years, only to have these withdrawals sit in low interest-bearing general fund accounts.

Vetoing the change in Section 30 and maintaining the percentage at 7% will retain

that \$70.5 million in earnings in the Legacy Fund, helping the fund to grow at a faster pace while protecting the Legacy Fund's principal and utilizing better cash management to generate higher earnings - all while not affecting any specific appropriations in the 2023-25 budget.

One estimate projects that the 8% rate would have resulted in roughly \$600 million to \$650 million less in the Legacy Fund's balance after 10 years. By keeping the withdrawal percentage at 7% every other year, a projected \$486 million in Legacy Fund earnings still remains in the 2023-25 final budget. Retaining more earnings in the Legacy Fund helps ensure a strong and stable future for North Dakota.

### Section 32.

Section 32 adds an unnecessary restriction on the authority of the Capital Grounds Planning Commission to use designated funds where they have the most impact. This nine-member Commission includes the lieutenant governor, director of the State Historical Society, two citizen appointees, one licensed architect and four legislators, two from each chamber.

The duties of the Commission include the general administration of the Capitol Building Fund and the proper planning to maintain standards of the design and architecture for state facilities. In addition, Century Code already prescribes that major interior changes including new construction, remodeling, or renovation of any kind that are proposed or considered for the buildings or facilities on the Capitol grounds must be reviewed by the Commission.

Section 32 contradicts those duties by limiting the scope of work for the Commission by requiring that expenditures for projects and planning must be related to remodeling expenses only. The current process for the Commission has been effective in maintaining the symbol and headquarters of state government, and this change only adds red tape and guts the authority of a thoughtfully designed, existing governance board with a track record of making prudent, prioritized and fiscally responsible decisions.

This proposed restriction on the authority of the Commission will impair its ability to cover the comprehensive and complex needs of maintaining an accessible, safe and inspiring Capitol grounds with 132 acres and a collection of historically significant buildings totaling over 1.1 million square feet.

### Section 53.

Section 53 of SB 2015 applies a retroactive date for House Bill 1438, which I signed earlier this session granting a property tax exemption for buildings and land belonging to certain nonprofit public charities, including hospitals and nursing homes, effective Dec. 31, 2022.

Section 53 retroactively applies the tax exemption to become effective Dec. 31, 2021, which creates numerous implementation problems.

The tax revenue for the 2021 calendar year has already been collected and allocated by the proper political subdivisions, including local school districts, cities, counties, park districts and many other taxing districts, and there is no mechanism for these local governments to recover those funds. Thus, the only way to retroactively fulfill the

tax exemption is for each local government to grant a 2021 rebate to the nonprofit directly from other tax dollars collected in 2022. However, some political subdivisions may not have the liquidity or systems to facilitate this transfer between taxpayers and certain nonprofits, making the claw-back provision of Section 53 especially onerous on those local governments, school districts and their constituents.

The hallmark of a strong and fair economy is a stable tax and regulatory environment. Passing retroactive tax laws sets a dangerous precedent. Local political subdivisions have been following existing tax laws, and it's unfair to them to change the tax rules to enable a claw-back after the taxable period has been closed for nearly 1 ½ years.

For the reasons stated above, Sections 30, 32 and 53 of SB 2015 are vetoed.

Sincerely,

Doug Burgum  
Governor

Disapproved May 9, 2023

Filed May 10, 2023

NOTE: For the full text of Senate Bill No. 2015, including sections 30, 32, and 53, see chapter 47.

# MEASURES APPROVED OVER GOVERNOR'S VETO

## CHAPTER 592

### HOUSE BILL NO. 1416

AN ACT to create and enact section 26.1-36-12.7 of the North Dakota Century Code, relating to freedom of choice for health care services; and to provide for application.

VETO

April 13, 2023

The Honorable Dennis Johnson  
Speaker of the House  
North Dakota House of Representatives  
State Capitol  
Bismarck, ND

Re: House Bill 1416

Dear Speaker Johnson:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed House Bill 1416 and return it to the House.

Currently, North Dakota has only one health care system that offers both health care services (a provider) and health insurance plans (a payer) and therefore meets the bill's definition of "integrated delivery network."

House Bill 1416 targets only one health insurance plan offered in North Dakota and directly risks increasing health insurance costs for over 13,000 North Dakotans. These citizens made the personal choice to enroll in a health care plan with a narrow (versus broad) provider network to achieve paying substantially lower health insurance premiums. It should be noted that this plan's "narrow" network of approximately 3,500 North Dakota providers includes 1,600 providers who are not employees of the integrated delivery network offering the plan.

Multiple health insurers serving North Dakota also offer reduced-price premium health insurance plans tied to narrow provider networks. However, because those payers would not be subject to the restrictions in House Bill 1416, this bill, if signed, would likely invite legal challenges based on North Dakota's constitutional prohibition on "special legislation" which targets one specific business or entity.

According to public testimony provided by the state's lone integrated delivery network, employers participating in its narrow plan are required to offer employees the broad provider network alongside the narrow provider network. At the end of the day, this is the consumer's decision, and each choice must be weighed according to personal preferences, circumstances and budgets.

Vertical integration in the U.S. health care industry, for better or worse, has accelerated since the implementation of the Affordable Care Act in 2010. Hundreds of integrated delivery networks now exist across the United States. While currently we have only one integrated delivery network in North Dakota, we could see additional health care service providers align with insurance companies to offer reduced-cost, narrow network health insurance plans. Such competition from new entrants in North Dakota would be constrained by the narrow limitation of House Bill 1416.

The extensive testimony and lobbying on both sides of this bill is part of a larger, ongoing, important debate about how to achieve health care affordability, accessibility and quality for all our citizens, including in our rural and tribal areas. This larger debate in our Capitol and across our country reflects genuine concerns about the market power and the potential conflicts of interest of vertical integration between payers and providers.

However, this bill does not resolve or solve those concerns. Currently, independent providers are included in many broad network insurance offerings from North Dakota insurers. Again, all this half-page bill would accomplish is to eliminate one reduced-cost plan currently purchased and in use by 13,000 citizens, which is less than 2 percent of all North Dakotans on health insurance plans in North Dakota.

We commend the Legislature for attempting to address concerns about the market power of vertical integration in health care. We encourage the Legislature to create a joint legislative/executive branch task force including our independently elected Insurance Commissioner to build upon prior efforts and continue a comprehensive review of affordability, accessibility and quality of North Dakota's health systems during the interim. The Legislature should insist that payers and providers come to the table with transparency and direct the task force to bring forward recommendations to the 69th Legislative Assembly to reduce costs, enhance patient outcomes and improve health for all North Dakotans.

For the reasons stated above, House Bill 1416 is vetoed.

Sincerely,

Doug Burgum  
Governor

Disapproved April 13, 2023

Filed April 20, 2023

NOTE: The Governor's veto of House Bill No. 1416 was not sustained. For the Text of House Bill No. 1416 as approved, see chapter 284.

## CHAPTER 593

### HOUSE BILL NO. 1463

AN ACT to amend and reenact section 44-04-21 of the North Dakota Century Code, relating to legislative voting requirements.

VETO

April 7, 2023

The Honorable Dennis Johnson  
Speaker of the House  
North Dakota House of Representatives  
State Capitol  
Bismarck, ND

Re: House Bill 1463

Dear Speaker Johnson:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed House Bill 1463 and return it to the House.

Governing bodies across North Dakota, including the Legislature, are bound by N.D.C.C. 44-04-21, which states "all votes of whatever kind taken at any public meeting ... must be open, public votes, and all nonprocedural votes must be recorded roll call votes, with the votes of each member being made public at the open meeting."

Floor testimony on House Bill 1463 stated the Legislature currently is in violation of this law because not all amendments receive a recorded roll call vote. However, rather than simply comply with the law, the Legislature has opted to change the law to suit its current practice.

House Bill 1463 would exclude the Legislature from the legal requirement to hold recorded roll call votes on all nonprocedural votes relating to the consideration of an amendment by a legislative committee or the full legislative assembly during a legislative session. Existing North Dakota law (N.D.C.C. 44-04-21) states that "nonprocedural" should be broadly interpreted and includes all votes that pertain to the merits of the matter before the governing body."

House Bill 1463 would allow the Legislature to adopt far-reaching amendments affecting the central policy or fiscal impact of a bill without affording the public the accountability of a recorded roll call vote. If enacted, this bill would deny the public the transparency essential to good governance.

For building public trust and confidence in our system of government, the Legislature should embrace and comply with existing North Dakota open meetings law.

For the reasons stated above, House Bill 1463 is vetoed.

Sincerely,

Doug Burgum  
Governor

Disapproved April 7, 2023

Filed April 17, 2023

NOTE: The Governor's veto of House Bill No. 1463 was not sustained. For the Text of House Bill No. 1463 as approved, see chapter 398.



# INITIATED MEASURES APPROVED

## CHAPTER 594

This initiated measure would add a new article to the North Dakota Constitution. It would stipulate that an individual could not serve as a legislator for a cumulative period in excess of eight years in either the House of Representatives or the Senate, separately. It would prohibit an individual from being elected as Governor more than twice. Service as a member of the legislature or election to the office of governor prior to the effective date of this measure would not count against any service or election, respectively, of any individual that occurs after the effective date of this measure. An individual would not be allowed to serve a full or remaining term as a member of the legislature if serving the term would cause the individual to serve for a cumulative period of more than eight years in that particular house. Any amendment to this article could not be proposed by the legislature, but only by citizen initiative. The article would become effective on January 1 immediately following approval of the voters. In case of conflict with any other provision of the constitution, the measure states that the provisions of this article would prevail.

### BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** A new article of the Constitution of the State of North Dakota is created and enacted as follows:

**Section 1. Term limits for legislators.** An individual shall not serve as a member of the house of representatives for a cumulative period of time amounting to more than eight (8) years. An individual shall not serve as a member of the senate for a cumulative period of time amounting to more than eight (8) years. An individual shall not be eligible to serve a full or remaining term as member of the house of representatives or the senate if serving the full or remaining term would cause the individual to serve for a cumulative period of time amounting to more than eight (8) years in that respective house.

**Section 2. Term limit for Governor.** An individual shall not be elected to the office of governor more than twice. This provision shall not prevent the

lieutenant governor from succeeding to the office of governor, nor prevent the secretary of state from acting as governor.

**Section 3. Application of term limits.** The limitations established by this article shall have prospective effect only, and service as a member of the house of representatives, service as a member of the senate, and prior election to the office of governor shall not be counted against any service or election, respectively, of any individual that occurs after the effective date of this amendment. Service by the lieutenant governor in his capacity as president of the senate shall not count toward the cumulative amount of time an individual may serve as a member of the senate.

**Section 4. The people's term limits amendment.** Notwithstanding the legislative assembly's authority to propose amendments to this constitution under article IV,

section 16 thereof, the legislative assembly shall not have authority to propose an amendment to this constitution to alter or repeal the term limitations established in section 1 of this article. The authority to propose an amendment to this constitution to alter or repeal the term limitations established in section 1 of this article is reserved to initiative petition of the people under article III of this constitution.

**Section 5. Effective date.** This amendment shall be effective on the first day of January immediately following approval by voters.

**Section 6. Severability.** The provisions of this article are severable, and if any provision is held to be invalid, either on its face or as applied, the remaining provisions and their application shall not be affected thereby. In any case of a conflict between any provision of this article and any other provision of this constitution, the provisions of this article shall control.

Approved November 8, 2022

150,363 to 86,674

NOTE: This was measure No. 1 on the general election ballot.

# INITIATED MEASURES DISAPPROVED

## CHAPTER 595

This initiated measure would create a new chapter of the North Dakota Century Code. It would allow for the production, processing, and sale of cannabis and the possession and use of various forms of cannabis by individuals who are 21 years of age and older, within limitations as to location; direct a state entity to regulate and register adult-use cannabis production businesses, dispensaries, and their agents; permit an individual to possess a limited amount of cannabis product; provide protections, limitations, penalties, and employer rights relating to use of cannabis products; and provide that fees are to be appropriated for administration of the chapter.

### BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

**SECTION 1.** Chapter 19-24.2 of the North Dakota Century Code is created and enacted as follows:

#### **19-24.2-01. Definitions.**

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

1. "Adult-use cannabinoid capsule" means a small, soluble container, usually made of gelatin, which encloses a dose of an adult-use cannabinoid product or an adult-use cannabinoid concentrate intended for consumption. The maximum concentration or amount of tetrahydrocannabinol permitted in a serving of an adult-use cannabinoid capsule is ten milligrams.
2. "Adult-use cannabinoid concentrate" means an adult-use cannabinoid concentrate or extract obtained by separating cannabinoids from cannabis by a mechanical, chemical, or other process.
3. "Adult-use cannabinoid edible product" means a soft or hard lozenge in a geometric square shape into which an adult-use cannabinoid concentrate or the dried leaves or flowers of the plant of the genus cannabis is incorporated. The maximum concentration or amount of tetrahydrocannabinol permitted in a serving of an adult-use cannabinoid edible product is ten milligrams and in a package is one hundred milligrams.
4. "Adult-use cannabinoid product" means a product intended for human consumption or use which contains cannabinoids.
  - a. Adult-use cannabinoid products are limited to the following forms:
    - (1) Adult-use cannabinoid solution;
    - (2) Adult-use cannabinoid capsule;
    - (3) Adult-use cannabinoid transdermal patch;

- (4) Adult-use cannabinoid topical; and
  - (5) Adult-use cannabinoid edible product.
- b. The term does not include:
- (1) An adult-use cannabinoid concentrate by itself; or
  - (2) The dried leaves or flowers of the plant of the genus cannabis by itself.
5. "Adult-use cannabinoid solution" means a solution consisting of a mixture created from an adult-use cannabinoid concentrate and other ingredients. A container holding an adult-use cannabinoid solution for dispensing may not exceed thirty milliliters.
  6. "Adult-use cannabinoid topical" means an adult-use cannabinoid product intended to be applied to the skin or hair. The maximum concentration or amount of tetrahydrocannabinol permitted in an adult-use cannabinoid topical is six percent.
  7. "Adult-use cannabinoid transdermal patch" means an adhesive substance applied to the skin which contains an adult-use cannabinoid product or an adult-use cannabinoid concentrate for absorption into the bloodstream. The maximum concentration or amount of tetrahydrocannabinol permitted in each adult-use cannabinoid transdermal patch is ten milligrams.
  8. "Adult-use cannabis" means the dried leaves or flowers of the plant of the genus cannabis.
  9. "Adult-use cannabis business" means a manufacturing facility or dispensary.
  10. "Adult-use cannabis business agent" means a principal officer, board member, member, manager, governor, employee, volunteer, or agent of an adult-use cannabis business. The term does not include a lawyer representing an adult-use cannabis business in civil or criminal litigation or in an adversarial administrative proceeding.
  11. "Adult-use cannabis consumer" means an individual, twenty-one years of age or older, who purchases approved adult-use cannabis products for personal use, but not for resale to others.
  12. "Adult-use cannabis product" means adult-use cannabis, an adult-use cannabinoid concentrate, or adult-use cannabinoid product.
  13. "Allowable amount of cannabis" means:
    - a. One ounce [28.35 grams] of adult-use cannabis;
    - b. Four grams of an adult-use cannabinoid concentrate;
    - c. Five hundred milligrams of total tetrahydrocannabinol in the form of an adult-use cannabinoid product; and
    - d. Three cannabis plants and the cannabis produced by the plants if the cannabis produced is kept at the same location as the plants.

14. "Cannabinoid" means a chemical compound that is one of the active constituents of cannabis.
15. "Cannabis" is a genus of flowering plants within the Cannabaceae family and means all parts of the plant, whether growing or not; tetrahydrocannabinol contained within or extracted from any part of the plant; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacturer, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include:
  - a. Hemp regulated under chapter 4.1-18.1;
  - b. A prescription drug approved by the United States food and drug administration under section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355]; or
  - c. The weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other products, including cannabinoid products and cannabis-infused products.
16. "Cannabis accessory" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, or inhaling cannabis, or otherwise introducing cannabis into the human body.
17. "Cannabis waste" means unused, surplus, returned, or out-of-date adult-use cannabis products, recalled adult-use cannabis products, unused cannabis, or plant debris of the plant of the genus cannabis, including dead plants and all unused plant parts and roots.
18. "Cardholder" means an adult-use cannabis business agent who has been issued and possesses a valid registry identification card.
19. "Department" means the department of health and human services or an agency, board, commission, or department designated by the Legislature.
20. "Dispensary" means an entity registered by the department as an adult-use cannabis business authorized to sell adult-use cannabis products.
21. "Enclosed and locked facility" means a closet, room, greenhouse, building, or other enclosed area equipped with locks or other security devices that permit access limited to individuals authorized under this chapter or rules adopted under this chapter.
22. "Manufacturing facility" means an entity registered by the department as an adult-use cannabis business authorized to produce and process cannabis and to sell adult-use cannabis products to a dispensary.
23. "Maximum concentration or amount of tetrahydrocannabinol" means the total amount of tetrahydrocannabinol and tetrahydrocannabinolic acid in an adult-use cannabinoid concentrate or an adult-use cannabinoid product.

24. "Owner" means an individual or an organization with an ownership interest in an adult-use cannabis business.
25. "Ownership interest" means an aggregate ownership interest of five percent or more in an adult-use cannabis business, unless such interest is solely a security, lien, or encumbrance, or an individual who will be participating in the direction, control, or management of the adult-use cannabis business.
26. "Processing" or "process" means the compounding or conversion of cannabis into an adult-use cannabinoid concentrate or adult-use cannabinoid product.
27. "Producing", "produce", or "production" mean the planting, cultivating, growing, trimming, or harvesting of cannabis or the drying of the leaves or flowers of cannabis.
28. "Registration certificate" means written authorization provided by the department under this chapter permitting an adult-use cannabis business to engage in a specified activity authorized under this chapter.
29. "Registry identification card" means a document issued by the department which identifies an individual as a registered adult-use cannabis business agent.
30. "School" means an early childhood service licensed under chapter 50-11.1, a preschool, an elementary school, or a high school.
31. "Substantial corporate change" means:
  - a. For a corporation, a change of ten percent or more of the officers or directors, or a transfer of ten percent or more of the stock of such corporation, or an existing stockholder obtaining ten percent or more of the stock of the corporation;
  - b. For a limited liability company, a change of ten percent or more of the managing members of the company, or a transfer of ten percent or more of the ownership interest in the company, or an existing member obtaining a cumulative of ten percent or more of the ownership interest in the company; or
  - c. For a partnership, a change of ten percent or more of the managing partners of the partnership, or a transfer of ten percent or more of the ownership interest in the partnership, or an existing member obtaining a cumulative of ten percent or more of the ownership interest in the partnership.
32. "Tetrahydrocannabinol" means tetrahydrocannabinols naturally contained in a plant of the genus cannabis, and synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of the plant, including synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, including:
  - a. Delta-1 cis or trans tetrahydrocannabinol and their optical isomers. Other names: Delta-9-tetrahydrocannabinol.

- b. Delta-6 or trans tetrahydrocannabinol, and their optical isomers. Other names: Delta-8 tetrahydrocannabinol.
  - c. Delta-3, 4 cis or trans tetrahydrocannabinol, and its optical isomers, since nomenclature of these substances is not intentionally standardized, compounds of these structures, regardless of numerical designation or atomic positions covered. Tetrahydrocannabinol does not include:
    - (1) The allowable amount of total tetrahydrocannabinol found in hemp as defined in chapter 4.1-18.1; or
    - (2) A prescription drug approved by the United States food and drug administration under section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355].
33. "Total tetrahydrocannabinol" means the sum of the percentage by weight of tetrahydrocannabinolic acid multiplied by eight hundred seventy-seven thousandths plus the percentage of weight of tetrahydrocannabinol.
34. "Verification system" means the system maintained by the department for verification of registry identification cards.

#### **19-24.2-02. Adult-use cannabis program.**

No later than October 1, 2023, the department shall establish and implement an adult-use cannabis program to allow for the production and processing of cannabis and the sale of adult-use cannabis products to an individual who is twenty-one years of age and older, subject to the provisions of this chapter. A person may not produce, process, sell, possess, consume, transport, or transfer cannabis or adult-use cannabis products unless the person is authorized to do so in accordance with this chapter or by rule adopted pursuant to this chapter or is otherwise permitted to do so by law.

#### **19-24.2-03. Adult-use cannabis business.**

- 1. A person may not process, produce, or transfer adult-use cannabis products or otherwise act as an adult-use cannabis business in this state unless the person is registered as an adult-use cannabis business or is otherwise allowed to do so by this chapter or by law.
- 2. The department may not register more than:
  - a. Seven adult-use cannabis businesses with the sole purpose of operating as a manufacturing facility; and
  - b. Eighteen adult-use cannabis businesses with the sole purpose of operating as a dispensary.
- 3. The department shall establish an open application period for the submission of adult-use cannabis business applications. At the completion of the open application period, the department shall review each complete application using a competitive process established in accordance with rules adopted under this chapter and shall determine which applicants to register as adult-use cannabis businesses.

4. If the department revokes or does not renew an adult-use cannabis business registration certificate, the department may establish an open application period for the submission of adult-use cannabis business applications.
5. The department of commerce may not certify an adult-use cannabis business as a primary sector business.

**19-24.2-04. Adult-use cannabis business - Authority - Ownership.**

1. The activities of a manufacturing facility are limited to producing, processing, and related activities, including acquiring, possessing, storing, transferring, and transporting cannabis and adult-use cannabis products, for the sole purpose of selling adult-use cannabis products to a dispensary.
2. The activities of a dispensary are limited to purchasing adult-use cannabis products from a manufacturing facility and related activities, including storing, delivering, transferring, and transporting adult-use cannabis products, for the sole purpose of dispensing adult-use cannabis products to adult-use cannabis consumers.
3. The activities of a dispensary include providing educational material and selling supplies related to the consumption and storage of adult-use cannabis products. A dispensary may sell only supplies related to the consumption and storage of adult-use cannabis products to an adult-use cannabis consumer. All educational material and supplies related to the consumption and storage of adult-use cannabis products are subject to prior department approval.
4. An individual or an organization may not hold an ownership interest in:
  - a. More than one manufacturing facility.
  - b. More than four dispensaries.
  - c. More than one dispensary within a twenty-mile [32.19 kilometer] radius of another dispensary.
5. A manufacturing facility and dispensary may not enter an agreement under which a dispensary agrees to limit purchases or sales of adult-use cannabis products to one manufacturing facility.

**19-24.2-05. Adult-use cannabis business - Application.**

1. The department shall establish forms for an applicant to be registered as an adult-use cannabis business. For an adult-use cannabis business registration application to be complete and eligible for review, the applicant shall submit to the department:
  - a. A nonrefundable application fee, not to exceed five thousand dollars.
  - b. The legal name, articles of incorporation or articles of organization, and bylaws or operating agreement of the proposed adult-use cannabis business applicant.
  - c. Evidence of the proposed adult-use cannabis business applicant's registration with the secretary of state and certificate of good standing.

- d. The physical address of the proposed location of the proposed adult-use cannabis business and:
    - (1) Evidence of approval from local officials as to the proposed adult-use cannabis business applicant's compliance with local zoning laws for the physical address to be used by the proposed cannabis business; and
    - (2) Evidence the physical address of the proposed adult-use cannabis business is not located within one thousand feet [304.80 meters] of a property line of a pre-existing public or private school.
  - e. For a manufacturing facility applicant, a description of the enclosed and locked facility that would be used in the production and processing of cannabis, including steps that will be taken to ensure the production and processing is not visible from the street or other public areas.
  - f. The name, address, and date of birth of each principal officer and board member, or of each member-manager, manager, or governor, of the proposed adult-use cannabis business applicant and verification each officer and board member, or each member-manager, manager, or governor, has consented to a criminal history record check conducted under section 12-60-24.
  - g. For each of the proposed adult-use cannabis business applicant's principal officers and board members, or for each of the proposed adult-use cannabis business applicant's member-managers, managers, or governors, a description of that individual's relevant experience, including training or professional licensing related to medicine, pharmaceuticals, natural treatments, botany, food science, food safety, production, processing, and the individual's experience running a business entity.
  - h. A description of proposed security and safety measures.
  - i. An example of the design and security features of adult-use cannabis product containers.
  - j. A complete operations manual.
  - k. A list of all individuals and business entities having direct or indirect authority over the management or policies of the proposed adult-use cannabis business applicant.
  - l. A list of all individuals and business entities having an ownership interest in the proposed adult-use cannabis business applicant, whether direct or indirect, and whether the interest is in the profits, land, or building, including owners of any business entity that owns all or part of the land or building.
  - m. The identity of any creditor holding a security interest in the proposed adult-use cannabis business premises.
2. The department is not required to review an application submitted under this section unless the department determines the application is complete. The criteria considered by the department in reviewing an application must include:

- a. The suitability of the proposed adult-use cannabis business location, including compliance with any local zoning laws, and the geographic convenience to access adult-use cannabis businesses for adult-use consumers throughout the state;
  - b. The character and relevant experience of the principal officers and board members, or of the member-managers, managers, or governors, including training or professional licensing and business experience;
  - c. The applicant's plan for operations and services, including staffing and training plans, and whether the applicant has sufficient capital to operate;
  - d. The sufficiency of the applicant's plans for recordkeeping;
  - e. The sufficiency of the applicant's plans for safety, security, and the prevention of diversion, including the proposed location and security devices employed;
  - f. The applicant's plan for safe and accurate packaging and labeling of adult-use cannabis products; and
  - g. The applicant's plans for complying with applicable testing requirements for adult-use cannabis products and cannabis.
3. Following completion of the review under subsection 2, the department shall select the applicants eligible for registration.

#### **19-24.2-06. Adult-use cannabis business - Registration.**

1. Upon receiving notification by the department that an adult-use cannabis business application is eligible for registration, the applicant shall submit all of the following items to the department to qualify for registration:
  - a. A certification fee in an amount not to exceed ninety thousand dollars for a dispensary and one hundred ten thousand dollars for a manufacturing facility.
  - b. A financial assurance or security bond to ensure the protection of the public health and safety and the environment in the event of abandonment, default, or other inability or unwillingness to meet the requirements of this chapter.
  - c. The physical address of the proposed adult-use cannabis business; confirmation the information in the application regarding the physical location of the proposed adult-use cannabis business has not changed, and if the information has changed the department shall determine whether the new information meets the requirements of this chapter; and a current certificate of occupancy, or equivalent document, to demonstrate compliance with the provisions of state and local fire code for the physical address of the proposed adult-use cannabis business. It is not necessary for an applicant to resubmit any information provided in the initial application unless there has been a change in that information.
  - d. An update to previously submitted information, including information about adult-use cannabis business agents.

2. If an applicant complies with subsection 1 and holds a valid registration under chapter 19-24.1, the department shall issue the applicant a registration certificate, which must be included in the total number of cannabis businesses the department may register under section 19-24.2-03.

**19-24.2-07. Adult-use cannabis business - Renewal.**

1. An adult-use cannabis business registration certificate expires two years after issuance. An adult-use cannabis business may submit a renewal application at any time beginning ninety calendar days before the expiration of the registration certificate. An adult-use cannabis business shall submit a renewal application a minimum of sixty calendar days before the expiration of the registration certificate to avoid suspension of the certificate.
2. The department shall approve an adult-use cannabis business's renewal application within sixty calendar days of submission if:
  - a. The adult-use cannabis business submits a renewal fee, in an amount not to exceed ninety thousand dollars for a dispensary and one hundred ten thousand dollars for a manufacturing facility, which the department shall refund if the department rejects the renewal application;
  - b. The adult-use cannabis business submits a complete renewal application;
  - c. Inspections conducted under this chapter do not raise any serious concerns about the continued operation of the adult-use cannabis business; and
  - d. The adult-use cannabis business continues to meet all the requirements for the operation of an adult-use cannabis business as set forth in this chapter and rules adopted under this chapter.
3. If an adult-use cannabis business does not meet the requirements for renewal, the department may not issue a registration certificate and the department shall provide the adult-use cannabis business with written notice of the determination. If an adult-use cannabis business's certificate is not renewed, the adult-use cannabis business shall dispose of all cannabis and adult-use cannabis products in accordance with rules adopted under this chapter.

**19-24.2-08. Adult-use cannabis business - Registration certificates.**

A registration certificate authorizing the operation of an adult-use cannabis business must include:

1. The name and address of the adult-use cannabis business;
2. A designation indicating whether the type of adult-use cannabis business is a manufacturing facility or dispensary;
3. A unique license number issued by the department; and
4. Any other information deemed necessary by the department.

**19-24.2-09. Adult-use cannabis business - Notification of changes.**

1. Upon application of an adult-use cannabis business to the department, a registration certificate of an adult-use cannabis business may be amended to authorize a change in the authorized physical location of the adult-use cannabis business, or to amend the ownership or organizational structure of the adult-use cannabis business with the registration certificate. An adult-use cannabis business shall provide the department a written notice of any change described under this section at least sixty calendar days before the proposed effective date of the change.
2. A registration certificate authorizing the operation of an adult-use cannabis business is void upon a change in ownership, substantial corporate change, change in location, or discontinued operation, without prior approval of the department. The department may adopt rules allowing for certain types of changes in ownership without the need for prior written approval from the department.
3. The department shall authorize the use of additional structures located within five hundred feet [152.40 meters] of the location described in the original application, unless the department makes an affirmative finding the use of additional structures would jeopardize public health or safety or would result in the cannabis business being within one thousand feet [304.80 meters] of a property line of a pre-existing public or private school. The department may waive all or part of the required advance notice to address emergent or emergency situations.

**19-24.2-10. Adult-use cannabis business - Agents - Registry identification cards.**

1. Upon issuance of an adult-use cannabis business registry certificate, the department shall issue a registry identification card to each qualified adult-use cannabis business agent associated with the adult-use cannabis business.
2. To qualify to be issued a registry identification card, each adult-use cannabis business agent must be at least twenty-one years of age and shall submit to the department all of the following registry identification card application material:
  - a. A photographic copy of the agent's department-approved identification. The agent shall make the identification available for inspection and verification by the department.
  - b. A recent two-by-two inch [5.08-by-5.08 centimeter] photograph of the agent.
  - c. A written and signed statement from an officer or executive staff member of the adult-use cannabis business stating the applicant is associated with the adult-use cannabis business and the capacity of the association.
  - d. The name, address, and telephone number of the agent.
  - e. The name, address, and telephone number of the adult-use cannabis business with which the agent is associated.
  - f. The agent's signature and the date.

- g. A nonrefundable application or renewal fee in the amount of two hundred dollars.
3. Each adult-use cannabis business agent shall consent to a criminal history record check conducted under section 12-60-24 to demonstrate compliance with the eligibility requirements.
    - a. All applicable fees associated with the required criminal history record checks must be paid by the adult-use cannabis business or the agent.
    - b. A criminal history record check must be performed upon initial application and biennially upon renewal. An adult-use cannabis business agent shall consent to a criminal history record check at any time the department determines necessary.
  4. The department shall notify the adult-use cannabis business in writing of the purpose for denying an adult-use cannabis business agent application for a registry identification card. The department shall deny an application if the agent fails to meet the registration requirements or to provide the information required, or if the department determines the information provided is false. The cardholder may appeal a denial or revocation of a registry identification card to the district court of Burleigh County. The court may authorize the cardholder to appear by reliable electronic means.
  5. The department shall issue an adult-use cannabis business agent a registry identification card within thirty calendar days of approval of an application.
  6. Within ten calendar days of a change in the cardholder's name or address or knowledge of a change that would render the adult-use cannabis business agent no longer eligible to be a cardholder, an adult-use cannabis business agent with a registry identification card shall notify the department in a manner prescribed by the department.
  7. If an adult-use cannabis business agent loses the agent's registry identification card, that agent shall notify the department in writing within twenty-four hours of becoming aware the card has been lost.
  8. If a cardholder notifies the department of items listed in this section but the nature of the item reported results in the cardholder remaining eligible, the department may issue the cardholder a new registry identification card with a new random ten-digit alphanumeric identification number within twenty calendar days of approving the updated information and the cardholder shall pay a fee, not to exceed twenty-five dollars. If a cardholder notifies the department of an item that results in the cardholder being ineligible, the registry identification card becomes void immediately.
  9. An adult-use cannabis business shall notify the department in writing within two calendar days of the date an adult-use cannabis business agent ceases to work for or be associated with the adult-use cannabis business. Upon receipt of the notification, that individual's registry identification card is void.
  10. The registry identification card of an adult-use cannabis business agent expires one year after issuance or upon the termination of the adult-use cannabis business's registration certificate, whichever occurs first. To prevent interruption of possession of a valid registry identification card, an adult-use cannabis business agent shall renew a registry identification card by

submitting a complete renewal application no fewer than forty-five calendar days before the expiration date of the existing registry identification card.

**19-24.2-11. Registry identification card - Nontransferable.**

A registry identification card of an adult-use cannabis business agent is not transferable, by assignment or otherwise, to another person. If a person attempts to transfer a card in violation of this section, the registry identification card is void and the person is prohibited from all privileges provided under this chapter.

**19-24.2-12. Registry identification card.**

1. The registry identification card of an adult-use cannabis business agent must include:
  - a. The name of the cardholder;
  - b. The cardholder's affiliated adult-use cannabis business;
  - c. The date of issuance and expiration date;
  - d. A random ten-digit alphanumeric identification number containing at least four numbers and at least four letters which is unique to the cardholder;
  - e. A photograph of the cardholder; and
  - f. The phone number or website address at which the card can be verified.
2. Except as otherwise provided in this section or rule adopted under this chapter, a registry identification card expiration date is one year after the date of issuance.

**19-24.2-13. Adult-use cannabis business - Adult-use cannabis agents - Suspension - Revocation.**

1. The department may suspend or revoke the registry identification card of an adult-use cannabis business agent or a registration certificate of an adult-use cannabis business for a material misstatement by an applicant in an application or renewal.
2. The department may suspend or revoke a registry identification card of an adult-use cannabis business agent or registration certificate of an adult-use cannabis business for a violation of this chapter or rules adopted under this chapter.
3. If an adult-use cannabis business agent or an adult-use cannabis business sells or otherwise transfers cannabis or adult-use cannabis products to a person not authorized to possess cannabis or adult-use cannabis products under this chapter, the department may suspend or revoke the registry identification card of the adult-use cannabis business agent or the registration certificate of the adult-use cannabis business, or both.
4. If an adult-use cannabis business agent or an adult-use cannabis business sells or otherwise transfers cannabis or adult-use cannabis products in a form not authorized under this chapter, the department may suspend or revoke the

registry identification card of the adult-use cannabis business agent or the registration certificate of the adult-use cannabis business, or both.

5. The department shall provide written notice of suspension or revocation of a registry identification card or registration certificate.
  - a. A suspension may not be for a period longer than six months.
  - b. A manufacturing facility may continue to produce, process, and possess cannabis and adult-use cannabis products during a suspension, but may not transfer or sell adult-use cannabis products.
  - c. A dispensary may continue to possess adult-use cannabis products during a suspension, but may not purchase or transfer adult-use cannabis products.
  - d. An adult-use cannabis business agent or adult-use cannabis business may appeal a suspension or revocation of a registry identification card or registration certificate to the district court of Burleigh County. The court may authorize the adult-use cannabis business agent or adult-use cannabis business to appear by reliable electronic means.
6. If the department revokes a registry identification card of an adult-use cannabis business agent under this chapter, the adult-use cannabis business agent is disqualified from further participation under this chapter.

**19-24.2-14. Adult-use cannabis business - Adult-use cannabis business agents - Violations - Penalties.**

1. An adult-use cannabis business agent or adult-use cannabis business that fails to provide a notice as required under this chapter shall pay to the department a fee in an amount established by the department, not to exceed one hundred fifty dollars.
2. In addition to any other penalty applicable in law, a manufacturing facility or an adult-use cannabis business agent of a manufacturing facility is guilty of a class C felony for intentionally selling or otherwise transferring cannabis or adult-use cannabis products in any form, to a person other than a dispensary, or for intentionally selling or otherwise transferring cannabis in any form other than adult-use cannabis products, to a dispensary.
3. In addition to any other penalty applicable in law, a dispensary or an adult-use cannabis business agent of a dispensary for intentionally selling or otherwise transferring adult-use cannabis products, to an individual who the agent knows is under twenty-one years of age, in a form not allowed under this chapter, or in an amount that the agent knows would cause the adult-use cannabis consumer to purchase or possess more than the amount of adult-use cannabis products authorized by this chapter is guilty of a class C felony.
4. In addition to any other penalty applicable in law, a dispensary or an adult-use cannabis business agent of a dispensary which intentionally sells or otherwise transfers paraphernalia, to an individual who is under twenty-one years of age, or in a form not allowed under this chapter is guilty of a class A misdemeanor. A dispensary or an adult-use cannabis business agent is not subject to prosecution under this subsection for selling paraphernalia to a registered qualifying patient who is nineteen years of age or older under chapter 19-24.1.

5. In addition to any other penalty applicable in law, an adult-use cannabis business or an adult-use cannabis business agent that intentionally sells or otherwise transfers adult-use cannabis products in a form not allowed under this chapter is guilty of a class C felony.
6. An adult-use cannabis business or an adult-use cannabis business agent that knowingly submits false records or documentation required by the department to certify an adult-use cannabis business under this chapter is guilty of a class C felony.
7. In addition to any other penalty applicable in law, if an adult-use cannabis business violates this chapter the department may fine the adult-use cannabis business up to one thousand dollars per violation, per day, and upon subsequent violations may impose a fine not to exceed five thousand dollars per violation, per day.
8. An individual who knowingly submits false records or documentation required by the department to receive an adult-use cannabis business agent registry identification card is guilty of a class A misdemeanor. An individual convicted under this subsection may not continue to be affiliated with an adult-use cannabis business.

**19-24.2-15. Adult-use cannabis business - Transfer - Sale.**

1. An adult-use cannabis business shall comply with the transfer and sale requirements of this section.
2. Design and security features of adult-use cannabis products containers must be in accordance with rules adopted under this chapter.
3. A manufacturing facility or an adult-use cannabis business agent of the manufacturing facility may not transfer or sell cannabis or adult-use cannabis products directly to adult-use cannabis consumers. A manufacturing facility or an adult-use cannabis business agent of a manufacturing facility may sell adult-use cannabis products to a dispensary.
4. A dispensary or an adult-use cannabis business agent of the dispensary may not sell or provide adult-use cannabis products to an adult-use cannabis consumer in an amount greater than the allowable amount permitted by this chapter.
5. Before selling or providing an adult-use cannabis product to an individual, a dispensary or an adult-use cannabis business agent of the dispensary shall verify the age of the individual by requiring the individual to produce one of the following pieces of identification:
  - a. The individual's passport, issued by the United States or a foreign government;
  - b. The individual's driver's license, issued by the state or another state of the United States;
  - c. An identification card issued by the state;
  - d. A United States military identification card;

- e. An identification card issued by a federally recognized Indian tribe; or
  - f. Any other identification card issued by a state or territory of the United States which bears a picture of the individual, the name of the individual, the individual's date of birth, and a physical description of the individual.
6. The department may adopt rules requiring a dispensary to use an age verification scanner or any other equipment used to verify the age of an individual for the purpose of ensuring that the dispensary does not sell adult-use cannabis products to an individual who is under twenty-one years of age. Information obtained under this section may not be retained after verifying the age of an individual and may not be used for any purpose other than verifying the age of an individual.

#### **19-24.2-16. Adult-use cannabis consumers – Maximum purchase amount.**

An adult-use cannabis consumer may not purchase or possess more than the amount of adult-use cannabis products authorized by this chapter and the maximum amount an adult-use cannabis consumer is authorized to purchase in a single transaction is:

1. One ounce [28.35 grams] of adult-use cannabis;
2. Four grams of an adult-use cannabinoid concentrate; and
3. Five hundred milligrams of total tetrahydrocannabinol in the form of an adult-use cannabinoid product.

#### **19-24.2-17. Adult-use cannabis business - Inspection.**

1. An adult-use cannabis business is subject to random inspection by the department. During an inspection, the department may review the records of the adult-use cannabis business, including the adult-use cannabis business's financial, inventory, and sales records.
2. The department shall conduct inspections of adult-use cannabis businesses to ensure compliance with this chapter. The department shall conduct inspections of manufacturing facilities for the presence of contaminants and accurate labeling of potency. The department shall select a certified laboratory to conduct random quality sampling testing in accordance with rules adopted under this chapter. An adult-use cannabis business shall pay the cost of all random quality sampling testing.
3. The provisions of chapter 54-44.4 do not apply to the selection of a certified laboratory required by this chapter.

#### **19-24.2-18. Adult-use cannabis business - Pesticide and potency testing.**

A manufacturing facility shall test cannabis for the potency of products and the presence of pesticides. If a cannabis test indicates the presence of a pesticide, the manufacturing facility immediately shall report the test result to the department and to the agriculture commissioner. Upon the order of the department or agriculture commissioner, the manufacturing facility immediately shall destroy all affected or contaminated cannabis and adult-use cannabis products inventory in accordance with rules adopted under this chapter and shall certify to the department and to the

agriculture commissioner that all affected or contaminated inventory has been destroyed.

**19-24.2-19. Adult-use cannabis business - Cannabis plant.**

1. A manufacturing facility may have no more than ten thousand plants. For every five hundred plants in excess of one thousand plants a manufacturing facility possesses, the manufacturing facility shall pay the department an additional certification fee of ten thousand dollars. This fee is due at the time of increase and again at renewal of the adult-use cannabis business registration certificate.
2. A dispensary may not possess more than three thousand five hundred ounces [99.22 kilograms] of adult-use cannabis products at any time, regardless of formulation.
3. The department shall adopt rules to allow a manufacturing facility to possess no more than an additional fifty plants for the exclusive purpose of department-authorized research and development related to production and processing. These plants are not counted in a manufacturing facility possession amount and are not subject to an additional fee.

**19-24.2-20. Adult-use cannabis business - Security and safety.**

1. In compliance with rules adopted under this chapter, an adult-use cannabis business shall implement appropriate security and safety measures to deter and prevent the unauthorized entrance to areas containing cannabis and adult-use cannabis products and to prevent the theft of cannabis and adult-use cannabis products.
2. An adult-use cannabis business shall limit entry to an area in which production or processing takes place or in which cannabis or adult-use cannabis products are held and access is limited to authorized personnel.
3. An adult-use cannabis business must have a fully operational security alarm system at the authorized physical address, which includes an electrical support backup system for the alarm system to provide suitable protection against theft and diversion.
4. An adult-use cannabis business shall maintain documentation in an auditable form for:
  - a. All maintenance inspections and tests conducted under this section, and any servicing, modification, or upgrade performed on the security alarm system;
  - b. An alarm activation or other event that requires response by public safety personnel; and
  - c. Any breach of security.

**19-24.2-21. Adult-use cannabis business - Inventory control.**

1. An adult-use cannabis business shall comply with the inventory control requirements provided under this section and rules adopted under this chapter.

- a. A manufacturing facility shall:
  - (1) Employ a bar coding inventory control system to track batch, strain, and amounts of cannabis and adult-use cannabis products in inventory and to track amounts of adult-use cannabis products sold to dispensaries; and
  - (2) Host a secure computer interface to transfer inventory amounts and dispensary purchase information to the department.
- b. A dispensary shall employ a bar coding inventory control system to track batch, strain, and amounts of adult-use cannabis products in inventory.
2. An adult-use cannabis business shall store the adult-use cannabis business's cannabis and adult-use cannabis products in an enclosed and locked facility with adequate security, in accordance with rules adopted under this chapter.
3. An adult-use cannabis business shall conduct inventories of cannabis and adult-use cannabis products at the authorized location at the frequency and in the manner provided by rules adopted under this chapter. If an inventory results in the identification of a discrepancy, the adult-use cannabis business immediately shall notify the department and appropriate law enforcement authorities within seventy-two hours. An adult-use cannabis business shall document each inventory conducted by the adult-use cannabis business.
4. The provisions of chapter 54-44.4 do not apply to the selection of the information technology system selected by the department.

#### **19-24.2-22. Adult-use cannabis business - Operating manual - Training.**

1. An adult-use cannabis business shall maintain a current copy of the operating manual of the adult-use cannabis business which meets the requirements of rules adopted under this chapter.
2. An adult-use cannabis business shall develop, implement, and maintain on the premises an onsite training curriculum or shall enter contractual relationships with outside resources capable of meeting adult-use cannabis business agent training needs.

#### **19-24.2-23. Adult-use cannabis business - Bylaws and operating agreements.**

As part of the initial application of a proposed adult-use cannabis business, the applicant shall provide to the department a current copy of the applicant's bylaws or operating agreement. Upon receipt of a registration certificate, an adult-use cannabis business shall maintain the bylaws or operating agreement in accordance with this chapter. In addition to any other requirements, the bylaws or operating agreement must include the ownership or management structure of the adult-use cannabis business; the composition of the board of directors, board of governors, member-managers, or managers; and provisions relative to the disposition of revenues and earnings.

#### **19-24.2-24. Adult-use cannabis business - Retention of and access to records and reports.**

1. An adult-use cannabis business shall keep detailed financial reports of proceeds and expenses. An adult-use cannabis business shall maintain all inventory, sales, and financial records in accordance with generally accepted accounting principles. The adult-use cannabis business shall maintain all reports and records required under this section for a period of seven years. An adult-use cannabis business shall allow the department, or an audit firm contracted by the department, access at all times to all books and records kept by the adult-use cannabis business.
2. At least once every two years, an adult-use cannabis business must undergo an audit performed by a private certified public accountant or a private licensed public accountant. In lieu of an audit, the department may authorize an adult-use cannabis business to engage a private certified public accountant or a private licensed public accountant to perform an agreed upon procedures engagement. The department must approve the agreed upon procedures engagement.

**19-24.2-25. Adult-use cannabis business - Recordkeeping - Adult-use cannabis business agents - Registry identification cards.**

1. Each adult-use cannabis business shall maintain:
  - a. In compliance with rules adopted under this chapter, a personnel record for each adult-use cannabis business agent for a period of at least three years following termination of the individual's affiliation with the adult-use cannabis business. The personnel record must comply with minimum requirements set by rules adopted under this chapter.
  - b. A record of the source of funds to be used to open or maintain the adult-use cannabis business, including the name, address, and date of birth of any investor.
  - c. A record of each instance in which a current or prospective board member, member-manager, manager, or governor, who managed or served on the board of a business or not-for-profit entity and in the course of that service was convicted, fined, or censured or had a registration or license suspended or revoked in any administrative or judicial proceeding.
2. Each adult-use cannabis business agent shall hold a valid registry identification card.

**19-24.2-26. Verification system.**

1. The department shall maintain a confidential list of cardholders and each cardholder's registry identification number.
2. The department shall establish a secure verification system. The verification system must allow law enforcement personnel twenty-four-hour access to enter a registry identification number to determine whether the number corresponds with a current valid registry identification card. The system may disclose:
  - a. Whether an identification card is valid;
  - b. The name of the cardholder; and

- c. The cardholder's affiliated adult-use cannabis business.

### **19-24.2-27. Protections.**

Subject to the limitations of this chapter, but notwithstanding any other provision of state or local law:

1. An adult-use cannabis consumer is not subject to arrest or prosecution or the denial of any right or privilege, including a civil penalty or disciplinary action by a court or occupational or professional regulating entity for the acquisition, use, consumption, or possession of adult-use cannabis products or related supplies under this chapter.
2. It is presumed an adult-use cannabis consumer is engaged in the acquisition, use, consumption, or possession of adult-use cannabis products or related supplies in accordance with this chapter if the adult-use consumer is not in possession of adult-use cannabis products in an amount that exceeds what is authorized under this chapter. This presumption may be rebutted by evidence the conduct related to acquisition, use, consumption, or possession of adult-use cannabis products or related supplies was not in accordance with this chapter.
3. A manufacturing facility is not subject to prosecution, search or inspection, or seizure, except by the department or the department's designee, under this chapter for acting under this chapter to:
  - a. Produce, process, or conduct related activities for the sole purpose of selling adult-use cannabis products to a dispensary; or
  - b. Transfer, transport, or deliver cannabis or adult-use cannabis products to and from a department designee or manufacturing facility in accordance with this chapter.
4. A dispensary is not subject to prosecution, search or inspection, or seizure, except by the department or the department's designee, under this chapter for acting under this chapter to:
  - a. Purchase adult-use cannabis products from a manufacturing facility and conduct related activities for the sole purpose of selling adult-use cannabis products and related supplies, and provide educational materials to adult-use cannabis consumers; or
  - b. Transfer adult-use cannabis products to and from a department designee or related manufacturing facility in accordance with this chapter.
5. If the action performed by the adult-use cannabis business agent on behalf of the adult-use cannabis business is authorized under this chapter, a registered adult-use cannabis business agent is not subject to arrest or prosecution or the denial of any right or privilege, including a civil penalty or disciplinary action by a court or occupational or professional regulating entity, for working or volunteering for an adult-use cannabis business.
6. The sale and possession of supplies related to possession and consumption of adult-use cannabis products by a dispensary is lawful if in accordance with this chapter.

7. The adult use of cannabis by an adult-use cannabis consumer or the producing and processing and the selling of adult-use cannabis products by an adult-use cannabis business is lawful if in accordance with this chapter.
8. An adult-use cannabis consumer, adult-use cannabis business agent, or adult-use cannabis business is not subject to arrest or prosecution for use of cannabis accessories or possession with intent to use cannabis accessories in a manner consistent with this chapter.
9. A person in possession of cannabis waste in the course of transporting or disposing of the waste under this chapter and rules adopted under this chapter may not be subject to arrest or prosecution for that possession or transportation.
10. A person in possession of cannabis, adult-use cannabis products, or cannabis waste in the course of performing laboratory tests as provided under this chapter and rules adopted under this chapter is not subject to arrest or prosecution for possession or testing.

**19-24.2-28. Personal use - Political subdivisions - limitations.**

1. Subject to the limitations of this chapter, but notwithstanding any other provision of state or local law, the following acts may not be an offense under the laws or ordinances of any local governing body in the state or be subject to a civil fine, penalty, or sanction, or be a basis for detention, search, or arrest, to deny any right or privilege, or to seize or forfeit assets under state law or the laws of any local governing body, if the individual is at least twenty-one years of age:
  - a. Possessing, purchasing, using, ingesting, inhaling, planting, cultivating, harvesting, drying, processing, manufacturing, or transporting an allowable amount of cannabis.
  - b. Without consideration, delivering, distributing, or dispensing an allowable amount of cannabis to an individual at least twenty-one years of age.
  - c. Assisting another individual who is at least twenty-one years of age in any of the acts permitted by this chapter.
  - d. Allowing property to be used in any of the acts permitted by this chapter.
  - e. Possessing, purchasing, using, delivering, distributing, manufacturing, transferring, or selling cannabis accessories to individuals twenty-one years of age or older.
2. An individual may not be denied parental rights, custody of, or visitation with a minor based solely on conduct permitted by this chapter, unless the individual's behavior is such that it creates an unreasonable danger to a minor.
3. An individual on release and awaiting trial may not be punished or otherwise penalized based solely on conduct that is permitted by this chapter.
4. The possession of suspicion of possession of cannabis without evidence of quantity in excess of the allowable amount may not, by itself, constitute the

basis for detention, search, or arrest by law enforcement, or be the basis for the issuance of a search warrant.

5. Except when law enforcement is investigating whether an individual is driving or in actual physical control of any motor vehicle, snowmobile, implement of husbandry, motorboat, vessel, train, airplane, or other motorized form of transport while under the influence of cannabis, the following, alone or together, do not constitute reasonably articulable suspicion of a crime:
  - a. The odor of cannabis or burnt cannabis.
  - b. The possession or suspicion of possession of cannabis without evidence of quantity in excess of an allowable amount.
  - c. The possession of multiple containers of cannabis without evidence of quantity in excess of the allowable amount.
6. Unless required by federal law, an individual may not be denied eligibility in public assistance programs based solely on conduct that is allowed under this chapter.
7. An individual may not be denied by the state or local governing body the right to own, purchase or possess a firearm, or other weapon authorized by law based solely on conduct permitted by this chapter.

**19-24.2-29. Personal use - Penalties.**

1. An individual who cultivates the allowable amount of cannabis plants but the plants are visible and recognizable as cannabis by normal, unaided vision from a public place is subject to a fine not exceeding two-hundred and fifty dollars.
2. An individual who cultivates the allowable amount of cannabis plants but the plants are not kept in a locked space at a private residence is subject to a fine not exceeding two-hundred and fifty dollars.
3. An individual who possesses, produces, or without consideration, delivers, distributes, or dispenses to an individual who is at least twenty-one years of age more than the allowable amount of cannabis, but not more than twice the allowable amount of cannabis is subject to a fine not exceeding three hundred dollars.

**19-24.2-30. Limitations - Penalties.**

1. An adult-use cannabis consumer may use adult-use cannabis products at the following locations:
  - a. A private residence, including the person's curtilage, or yard; or
  - b. On private property, not generally accessible by the public, if the adult-use cannabis consumer is explicitly permitted to consume the adult-use cannabis products on the property by the owner of the property.
2. a. An adult-use cannabis consumer is prohibited from using or consuming adult-use cannabis products:

- (1) In any public place, including an indoor or outdoor area used by, or open to, the general public, or on any form of public transportation.
  - (2) On the grounds of any adult-use cannabis business, unless allowed by the legislature or department rule; or
  - (3) In a motor vehicle as defined by chapter 39-01.
- b. Unless a greater penalty is otherwise provided by law, an adult-use cannabis consumer who violates this subsection is guilty of an infraction.
3. An adult-use cannabis consumer may not undertake an activity while under the influence of cannabis if doing so would constitute negligence or professional malpractice. An adult-use cannabis consumer who violates this subsection may be subject to civil liability, criminal liability, or any other penalty as otherwise provided by law.
  4. a. An adult-use cannabis consumer may not possess, use, or consume adult-use cannabis products:
    - (1) On a schoolbus or school van used for school purposes.
    - (2) On the grounds of any public or private school, including all facilities, whether owned, rented, or leased, and all vehicles owned, leased, rented, contracted for, or controlled by a public or private school.
    - (3) At any location while a public or private school-sanctioned event is occurring.
    - (4) On state or federal property, including all facilities whether owned, rented, or leased, and in or upon any motor vehicles leased, rented, contracted for, or controlled by the state or federal government.
    - (5) On the grounds of a correctional facility.
    - (6) On the grounds of a child care facility or licensed home day care unless authorized under the rules adopted by the department of health and human services.
  - b. Unless a greater penalty is otherwise provided by law, an adult-use cannabis consumer who violates this subsection is guilty of an infraction.
  5. An adult-use cannabis consumer may not use or consume an adult-use cannabis product if the smoke or vapor of an adult-use cannabis product would be inhaled by an individual under twenty-one years of age. Unless a greater penalty is otherwise provided by law, an adult-use cannabis consumer who violates this subsection is guilty of an infraction.
  6. An adult-use cannabis consumer is prohibited from operating, navigating, or being in actual physical control of a motor vehicle, aircraft, train, snowmobile, or motorboat while under the influence of cannabis. An adult-use cannabis consumer may not be considered to be under the influence of cannabis solely because of the presence of metabolites or components of cannabis that appear in insufficient concentration to cause impairment. An adult-use

cannabis consumer who violates this subsection may be subject to civil liability, criminal liability, or any other penalty as otherwise provided by law.

7. This chapter does not require:
  - a. A person in lawful possession of property to allow a guest, client, customer, or other visitor to possess or consume adult-use cannabis products on or in the property; or
  - b. A landlord to allow production and processing of cannabis of adult-use cannabis products on rental property.
8. This chapter does not prohibit an employer from:
  - a. Disciplining or terminating the employment of an employee for possessing or consuming adult-use cannabis products in the workplace or for working while under the influence of cannabis. "Working" as used in this subdivision includes when an employee is on call.
  - b. Adopting a reasonable zero tolerance or drug-free workplace policy, or any employment policy concerning drug testing, smoking, consumption, storage, or use of cannabis in the workplace or while on call if the policy is applied in a nondiscriminatory manner.
  - c. Disciplining or terminating the employment of an employee for violating an employer's employment policies or workplace drug policy.
9. An employer may consider an employee to be impaired or under the influence of cannabis if the employer has a good-faith that an employee manifests specific, articulable symptoms while working which decrease or lessen the employee's performance of the duties or tasks of the employee's job position, including symptoms of the employee's speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior, or negligence or carelessness in operating equipment or machinery; disregard for the safety of the employee or others, or involvement in any accident that results in serious damage to equipment or property; disruption of a production or manufacturing process; or carelessness that results in any injury to the employee or others. If an employer elects to discipline an employee on the basis that the employee is under the influence or impaired by cannabis, the employer shall afford the employee a reasonable opportunity to contest the basis of the determination.
10. This chapter does not create or imply a cause of action for any person against an employer for:
  - a. Actions, including subjecting an employee or applicant to reasonable drug and alcohol testing under the employer's workplace drug policy, including an employee's refusal to be tested or to cooperate in testing procedures, and discipline or termination of employment, based on the employer's good-faith belief that an employee used or possessed cannabis in the employer's workplace or while performing the employee's job duties or while on call in violation of the employer's employment policies;
  - b. Actions, including discipline or termination of employment, based on the employer's good-faith belief an employee was impaired as a result of the use of cannabis, or under the influence of cannabis, while at the

employer's workplace or while performing the employee's job duties or while on call in violation of the employer's workplace drug policy; or

- c. Injury, loss, or liability to a third party if the employer did not know or have a reason to know the employee was impaired.
11. This chapter does not allow for processing or performing solvent-based extractions on cannabis if the equipment or process utilizes butane, propane, carbon dioxide or any potentially hazardous material, unless registered for this activity by the department.
  12. This chapter does not limit any privileges, rights, immunities, or defenses of a cardholder as provided under law.
  13. This chapter may not be construed to interfere with any federal, state, or local restrictions on employment, including the United States department of transportation regulation under title 49, Code of Federal Regulations, part 40, section 40.151(e) or impact an employer's ability to comply with federal or state law or cause it to lose a federal or state contract or funding.
  14. Except where specified, this chapter may not be construed to prevent the imposition of penalties for unlawful conduct involving cannabis.

#### **19-24.2-31. Rules.**

1. No later than October 1, 2023, the department shall adopt rules as necessary for the implementation and administration of this chapter, including transportation and storage of cannabis and adult-use cannabis products, advertising, packaging and labeling, standards for testing and testing facilities consistent with testing standards under chapter 19-24.1, inventory management, and accurate recordkeeping.
2. The department may adopt rules regarding the operation and governance of additional categories of registered adult-use cannabis businesses, including registrations that allow for only limited cultivation, processing, transportation, delivery, storage, or sale, registrations that allow for cultivation for purposes of propagation, and registrations intended to facilitate scientific research or education.

#### **19-24.2-32. Confidentiality.**

1. Information kept or maintained under this chapter by the department which is designated as a trade secret or could be used to identify an adult-use cannabis consumer is confidential.
2. Information kept or maintained under this chapter by the department may be disclosed as necessary for:
  - a. The verification of registration certificates and registry identification cards under this chapter;
  - b. Notification to state or local law enforcement of an apparent criminal violation;

- c. Notification to state and local law enforcement of falsified or fraudulent information submitted for purposes of obtaining or renewing a registry identification card; or
  - d. Data for statistical purposes in a manner such that an individual person or adult-use cannabis business is not identified.
3. Information submitted to a local government to demonstrate compliance with any security requirements required by local zoning ordinances or regulations is confidential.

#### **19-24.2-33. Report to the legislative management.**

By July first of each year, the department shall submit a report to the legislative management. The report must be written in a manner such that no individual, person, or adult-use cannabis business can be identified and must include:

1. The number and type of adult-use cannabis businesses;
2. Revenue and expenses of the department related to the implementation of this chapter;
3. Sales data by product type; and
4. Information for statistical purposes.

#### **19-24.2-34. Adult-use cannabis fund – Continuing appropriation.**

The adult-use cannabis fund is established in the state treasury. The department shall deposit in the fund all registration and licensing fees collected under this chapter. The department shall administer the fund. Moneys in the fund are appropriated to the department on a continuing basis for use in administering this chapter.

#### **SECTION 2. Severability.**

This measure shall be broadly construed to accomplish its purpose and intent. Nothing in this measure purports to supersede any applicable federal law, except as allowed by federal law. If any provision in this measure or the application thereof to any person or circumstance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of the measure that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this measure are severable.

**SECTION 3. Effective date.** This measure shall become effective thirty (30) days after it is approved by the People.

Disapproved November 8, 2023 131,192 to 107,608

NOTE: This was measure No. 2 on the general election ballot.

# CONSTITUTIONAL AMENDMENTS PROPOSED

## CHAPTER 596

### HOUSE CONCURRENT RESOLUTION NO. 3033

(Representatives Mock, Hagert, Ista, Kempenich, Kreidt, Schatz)  
(Senators Cleary, Meyer)

### LEGACY FUND DISTRIBUTIONS

A concurrent resolution to amend and reenact section 26 of article X of the Constitution of North Dakota, relating to spending and transfers from the legacy fund.

#### STATEMENT OF INTENT

This measure would decrease the amount of principal available for spending each biennium and would clarify the distributions from the legacy fund.

#### BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed amendment to section 26 of 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 held in 2024, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1. AMENDMENT.** Section 26 of article X of the Constitution of North Dakota is amended and reenacted as follows:

#### Section 26.

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. Transfers under this subsection and earnings accruing prior to July 1, 2017, are~~ 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~~ but 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~~ five 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.

4. The state investment board shall invest the ~~principal of the North Dakota~~moneys in the legacy fund. The
5. On July first of each odd-numbered year, the state treasurer shall transfer earnings of the North Dakota~~make a distribution from the legacy fund accruing after June 30, 2017, to the state general fund at the end of each biennium~~to a legacy earnings fund as provided by law, but a distribution may not result in an expenditure of principal.

Filed April 28, 2023

NOTE: This will be measure No. 3 on the 2024 general election.

## CHAPTER 597

### SENATE CONCURRENT RESOLUTION NO. 4001

(Legislative Management)  
(Acute Psychiatric Treatment Committee)

#### TERMINOLOGY DESCRIBING PUBLIC INSTITUTIONS

A concurrent resolution to amend and reenact sections 12 and 13 of article IX of the Constitution of North Dakota, relating to terminology describing public institutions.

##### STATEMENT OF INTENT

This measure would replace outdated terminology related to public institutions of the state.

##### BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendments to sections 12 and 13 of article IX of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 2024, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1. AMENDMENT.** Section 12 of article IX of the Constitution of North Dakota is amended and reenacted as follows:

**Section 12.** The following public institutions of the state are permanently located at the places hereinafter named, each to have the lands specifically granted to it by the United States in the Act of Congress approved February 22, 1889, to be disposed of and used in such manner as the legislative assembly may prescribe subject to the limitations provided in the article on school and public lands contained in this constitution.

1. The seat of government at the city of Bismarck in the county of Burleigh.
2. The state university and the school of mines at the city of Grand Forks, in the county of Grand Forks.
3. The North Dakota state university of agriculture and applied science at the city of Fargo, in the county of Cass.
4. A state normal school at the city of Valley City, in the county of Barnes, and the legislative assembly, in apportioning the grant of eighty thousand acres of land for normal schools made in the Act of Congress referred to shall grant to the said normal school at Valley City, as aforementioned, fifty thousand (50,000) acres, and said lands are hereby appropriated to said institution for that purpose.
5. The school for the deaf and ~~dumb of North Dakota~~ hard of hearing at the city of Devils Lake, in the county of Ramsey.

6. A state training school at the city of Mandan, in the county of Morton.
7. A state normal school at the city of Mayville, in the county of Traill, and the legislative assembly in apportioning the grant of lands made by Congress in the Act aforesaid for state normal schools shall assign thirty thousand (30,000) acres to the institution hereby located at Mayville, and said lands are hereby appropriated for said purpose.
8. A state hospital for the insane care of individuals with mental illness at the city of Jamestown, in the county of Stutsman. And the legislative assembly shall appropriate twenty thousand acres of the grant of lands made by the Act of Congress aforesaid for other educational and charitable institutions to the benefit and for the endowment of said institution, and there shall be located at or near the city of Grafton, in the county of Walsh, an institutional facility for the feeble minded individuals with developmental disabilities, on the grounds purchased by the secretary of the interior for a penitentiary building.

**SECTION 2. AMENDMENT.** Section 13 of article IX of the Constitution of North Dakota is amended and reenacted as follows:

**Section 13.** The following public institutions are located as provided, each to have so much of the remaining grant of one hundred seventy thousand acres of land made by the United States for "other educational and charitable institutions" as is allotted by law:

1. A soldiers' home, when located, or such other charitable institution as the legislative assembly may determine, at the city of Lisbon in the county of Ransom, with a grant of forty thousand acres of land.
2. The school for the blind at the city of Grand Forks in the county of Grand Forks or at such other location as may be determined by the legislative assembly to be in the best interests of the students of such institution and the state of North Dakota.
3. A school of forestry, or such other institution as the legislative assembly may determine, at such place in one of the counties of McHenry, Ward, Bottineau, or Rolette, as the electors of said counties may determine by an election for that purpose, to be held as provided by the legislative assembly.
4. A school of science or such other educational or charitable institution as the legislative assembly may prescribe, at the city of Wahpeton in the county of Richland, with a grant of forty thousand acres.
5. A state college at the city of Minot in the county of Ward.
6. A state college at the city of Dickinson in the county of Stark.
7. A state hospital for the ~~mentally ill~~ care of individuals with mental illness at such place within this state as shall be selected by the legislative assembly.

No other institution of a character similar to any one of those located by article IX, section 12, or this section shall be established or maintained without an amendment of this constitution.

Filed March 24, 2023

NOTE: This will be measure No. 1 on the 2024 general election.

## CHAPTER 598

### SENATE CONCURRENT RESOLUTION NO. 4013

(Senators Myrdal, Hogue)  
(Representatives Cory, Lefor)

#### INITIATED MEASURE PETITIONS

A concurrent resolution to amend and reenact sections 2, 3, 4, and 9 of article III of the Constitution of North Dakota, relating to the process for approving initiated constitutional amendments, the requirement of a single subject for each petition and measure, the individuals able to circulate a petition, and the requirement that all ballot measures must be voted on at the primary and general election.

#### STATEMENT OF INTENT

This measure would restrict circulation of petitions for an initiated constitutional amendment to qualified electors, require all petitions and measures to be limited to a single subject, and require all constitutional initiated measures under article III be voted on at the primary and general election.

#### BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendments to sections 2, 3, 4, and 9 of article III of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in November of 2024, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1. AMENDMENT.** Section 2 of article III of the Constitution of North Dakota is amended and reenacted as follows:

**Section 2.** An initiated measure may not embrace or be comprised of more than one subject, as determined by the secretary of state. A petition to initiate or to refer a measure must be presented to the secretary of state for approval as to form and compliance with the single subject requirement. A request for approval must be presented over the names and signatures of twenty-five or more qualified electors as sponsors, one of whom must be designated as chairman of the sponsoring committee. The secretary of state shall approve the petition for circulation if it is in proper form and contains the names and addresses of the sponsors and the full text of the measure.

The legislative assembly may provide by law for a procedure through which the legislative council may establish an appropriate method for determining the fiscal impact of an initiative measure and for making the information regarding the fiscal impact of the measure available to the public.

**SECTION 2. AMENDMENT.** Section 3 of article III of the Constitution of North Dakota is amended and reenacted as follows:

**Section 3.** The petition ~~shall~~may be circulated only by qualified electors. ~~They~~An individual circulating a petition shall swear thereon that the qualified electors who

have signed the petition did so in their presence. Each qualified elector signing a petition also shall also write in the date of signing and his ~~post-office~~ the qualified elector's complete residential address. ~~No~~ A law shall ~~may not~~ be enacted limiting the number of copies of a petition. The copies ~~shall~~ must become part of the original petition when filed.

**SECTION 3. AMENDMENT.** Section 4 of article III of the Constitution of North Dakota is amended and reenacted as follows:

**Section 4.** The petition may be submitted to the secretary of state if signed by qualified electors equal in number to two percent of the resident population of the state at the last federal decennial census.

**SECTION 4. AMENDMENT.** Section 9 of article III of the Constitution of North Dakota is amended and reenacted as follows:

**Section 9.** A constitutional amendment may be proposed by initiative petition. The petition may be circulated only by qualified electors. The proposed amendment may not embrace or be comprised of more than one subject, as determined by the secretary of state, and the secretary of state may not approve the initiative petition for circulation if the proposed amendment comprises more than one subject. If signed by qualified electors equal in number to ~~four~~ five percent of the resident population of the state at the last federal decennial census, the petition may be submitted to the secretary of state. If the secretary of state finds the petition is valid, the secretary of state shall place the measure on the ballot at the next primary election. If the majority of the votes cast on the measure are affirmative in the primary election, the measure must be placed on the ballot at the general election immediately following the primary election for final consideration. If a majority of votes cast for a proposed constitutional amendment are affirmative in the general election, the measure is deemed enacted. If the measure fails to receive the required number of votes to enact the measure at either the primary election or the general election, the measure is deemed failed. All other provisions relating to initiative measures apply hereto to initiative measures for constitutional amendments.

Filed April 12, 2023

NOTE: This will be measure No. 2 on the 2024 general election.

# HOUSE CONCURRENT RESOLUTIONS

## CHAPTER 599

### HOUSE CONCURRENT RESOLUTION NO. 3001

(Legislative Management)  
(Budget Section)

A concurrent resolution authorizing the Budget Section of the Legislative Management 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 program money expected for the next biennium by the Department of Commerce; and

**WHEREAS**, the Sixty-eighth Legislative Assembly cannot hold public hearings on revisions to current block grants or additional block grants that may be approved by Congress after recess or adjournment of the Legislative Assembly; and

**WHEREAS**, the Legislative Assembly will not meet in regular session during 2024, and thus its public hearing responsibility for grants not approved by the Sixty-eighth Legislative Assembly must be delegated to a legislative entity:

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE 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 program money for the period ending September 30, 2025; and

**BE IT FURTHER RESOLVED**, that the Budget Section of the Legislative Management 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-eighth Legislative Assembly through September 30, 2025, 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 March 22, 2023

## CHAPTER 600

### HOUSE CONCURRENT RESOLUTION NO. 3003

(Representative Bosch)  
(Senator Dever)

A concurrent resolution designating House and Senate employment positions and fixing compensation.

**NOW, THEREFORE, BE IT RESOLVED BY THE OF NORTH DAKOTA, THE CONCURRING THEREIN:**

That for the Sixty-eighth Legislative Assembly, the following positions are designated as employee positions of the House and Senate and are to be paid the daily wages indicated:

#### HOUSE

Chief clerk	\$217
Assistant chief clerk	193
Journal reporter	207
Calendar clerk	193
Bill and recording clerk	188
Sergeant-at-arms	173
Administrative assistant to majority leader	188
Staff assistant to majority leader	188
Administrative assistant to minority leader	188
Staff assistant to minority leader	188
Administrative assistant to Speaker	188
Deputy chief clerk	200
Quality assurance clerk	188
Procedural appropriations committee clerk	188
Technological appropriations committee clerk	188
Procedural assistant appropriations committee clerk	181
Technological assistant appropriations committee clerk	181
Procedural committee clerk	181
Technological committee clerk	181
Deputy sergeant-at-arms	145
Assistant sergeant-at-arms	135
Chief legislative assistant	146
Legislative assistant - page	124

#### SENATE

Secretary of the Senate	\$217
Assistant secretary of the Senate	193
Journal reporter	207
Calendar clerk	193
Bill and recording clerk	188

Sergeant-at-arms	173
Administrative assistant to majority leader	188
Staff assistant to majority leader	188
Administrative assistant to minority leader	188
Staff assistant to minority leader	188
Chief committee clerk	200
Quality assurance clerk	188
Procedural appropriations committee clerk	188
Technological appropriations committee clerk	188
Procedural assistant appropriations committee clerk	181
Technological assistant appropriations committee clerk	181
Procedural committee clerk	181
Technological committee clerk	181
Deputy sergeant-at-arms	145
Assistant sergeant-at-arms	135
Chief page	146
Legislative assistant - page	124
Legislative assistant - supply room coordinator	135

**BE IT FURTHER RESOLVED**, that each employee of the Sixty-eighth 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 House or the Senate, 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 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**, an employee is entitled to pay for any day the Legislative Assembly is in recess and any employee is required to be present for committee hearings or other legislative business; 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.

## CHAPTER 601

### HOUSE CONCURRENT RESOLUTION NO. 3004

(Representatives Monson, B. Anderson, Bellew, D. Johnson, Longmuir)  
(Senators Myrdal, Rust, Vedaa)

A concurrent resolution encouraging North Dakota citizens to purchase United States flags made out of hemp and manufactured in North Dakota.

**WHEREAS**, on June 14, 1777, the Continental Congress passed an Act to establish an official flag for our new nation; and

**WHEREAS**, for more than 200 years, the United States flag has served as a symbol of our nation's unity, freedom, and patriotism, as well as a source of pride and inspiration for millions of citizens;

**WHEREAS**, historians assert the first United States flags were made from hemp; and

**WHEREAS**, hemp is stronger and more durable than cotton; and

**WHEREAS**, hemp fades less than other fabrics; and

**WHEREAS**, state law prohibits state entities or political subdivisions from purchasing a United States flag unless the flag was manufactured in the United States; and

**WHEREAS**, North Dakota citizens should demonstrate their patriotism by supporting local businesses in our state which manufacture United States flags made out of durable materials, such as hemp;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

**BE IT FURTHER RESOLVED**, that all North Dakota citizens are encouraged to purchase United States flags made out of hemp and manufactured in North Dakota; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the commissioner of commerce and members of the North Dakota Congressional Delegation.

Filed March 13, 2023

## CHAPTER 602

### HOUSE CONCURRENT RESOLUTION NO. 3006

(Representatives Steiner, B. Anderson, D. Anderson, Lefor, J. Olson, Porter)  
(Senators Bekkedahl, Elkin, Hogue, Kannianen, Patten, Rummel)

A concurrent resolution urging Congress to support policies to increase oil refining capacity in the United States.

**WHEREAS**, rising gasoline, diesel, and jet fuel prices are contributing to high fuel prices due to high crude oil prices, and the shortage of oil refinery capacity has applied upward pressure on the cost of refined petroleum products; and

**WHEREAS**, global oil refinery capacity is over 3,000,000 barrels per day below prepandemic levels and domestic refining capacity in the United States is approximately 1,000,000 barrels per day below prepandemic capacity; and

**WHEREAS**, in 2020, a refinery in Convent, Louisiana, capable of refining 211,146 barrels of oil per day was powered down due to low demand, another company closed its refinery in Pennsylvania after an explosion, and some refineries that were idled during the pandemic are being permanently decommissioned; and

**WHEREAS**, annual inflation in the United States has reached 8.6 percent, the highest rate since December 1981, gasoline prices increased 48.7 percent in July 2022, and fuel oil prices increased 106.7 percent in July 2022, the largest increase on record; and

**WHEREAS**, increasing oil refining capacity, pipeline easement approvals, and federal land leasing will promote increased domestic oil production and lessen the United States' dependence on foreign oil sources while increasing supply at a lower cost to consumers;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Assembly urges the Congress to support policies that increase refining capacity in the United States; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to all members of Congress and the President of the United States.

Filed March 22, 2023

## CHAPTER 603

### HOUSE CONCURRENT RESOLUTION NO. 3007

(Representatives Bellew, D. Johnson, Klemin, Marschall, Martinson)  
(Senators Dever, Paulson, Wobbema)

A concurrent resolution commemorating the 50<sup>th</sup> anniversary of the end of the United States combat operations and the release of American prisoners of war in Vietnam.

**WHEREAS**, the year 2023 marks the 50<sup>th</sup> anniversary of the end of United States combat operations and the release of American prisoners of war in Vietnam; and

**WHEREAS**, United States combat operations in Vietnam came to an end on January 27, 1973; and

**WHEREAS**, of the 3,403,100 Americans who served with honor during the Vietnam War, there were 58,220 casualties, which included 198 North Dakotans who paid the ultimate sacrifice for our nation; and

**WHEREAS**, of the 766 prisoners of war, 114 died while captive in Vietnam, and 591 returned home during Operation Homecoming 50 years ago, from February to April of 1973; and

**WHEREAS**, the Vietnam War left almost 1,600 Americans unaccounted for, and nine North Dakotans are still listed as missing in action; and

**WHEREAS**, today there are more than 46,000 veterans living in North Dakota, including approximately 15,000 of our sons and daughters who served during the Vietnam era; and

**WHEREAS**, these North Dakota veterans heard the call of duty, stepped in, and served relentlessly and nobly in a brutal war; and

**WHEREAS**, the Vietnam War seldom received the attention it deserves, and now, half a century later, we honor our Vietnam veterans and offer them the proper respect of a grateful state and nation; and

**WHEREAS**, in recognition of the brave men and women who served with dignity and honor during this historic time and during what was, at the time, the longest war in our country's history, let us remember them and thank them for their service;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-eighth Legislative Assembly commemorates the 50<sup>th</sup> anniversary of the end of the United States combat operations and the release of American prisoners of war in Vietnam, and further call upon the people of our great state to join in honoring and expressing gratitude to all who valiantly served our nation during the Vietnam War, and to their families and loved ones; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward a copy of this resolution to each member of the North Dakota Congressional Delegation.

Filed March 13, 2023

## CHAPTER 604

### HOUSE CONCURRENT RESOLUTION NO. 3008

(Representatives Schauer, Bellew, Headland, D. Johnson, Klemin, Lefor, Pyle)  
(Senators Hogan, Wanzek, Wobbema)

A concurrent resolution urging the 118<sup>th</sup> Congress to take favorable action on S. 849 and H.R. 7972, to provide for the inclusion on the Vietnam Veterans Memorial Wall the names of the lost crew members of the U.S.S. Frank E. Evans.

**WHEREAS**, in the early morning hours of June 3, 1969, while participating in Operation Sea Spirit, the U.S.S. Frank E. Evans collided with the HMAS Melbourne in the South China Sea, resulting in the death of 74 United States sailors, including Patrick Gene Glennon of Fessenden, North Dakota, and Robert James Seale of Grand Forks, North Dakota; and

**WHEREAS**, all American ships were ordered out from combat support missions in Vietnam to participate in the training operation; and

**WHEREAS**, Public Law No. 96-297 [94 Stat. 827; 16 U.S.C. 431 et seq.], authorized the Vietnam Veterans Memorial Fund to establish a memorial in honor and recognition of the men and women of the armed forces of the United States who served in the Vietnam War; and

**WHEREAS**, the Vietnam Veterans Memorial Fund relies on the department of defense to compile the list of names and criteria for inclusion on the Vietnam Veterans Memorial Wall; and

**WHEREAS**, under title 38, United States Code, section 101, veterans who died as a direct or indirect result of military operations in Southeast Asia are eligible for inclusion on the memorial; and

**WHEREAS**, the evidence submitted regarding the accident that destroyed the U.S.S. Frank E. Evans, killing 74 of her sailors, shows the Evans had been operating in combat support missions and would have returned to combat support upon completing Operation Sea Spirit;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-eighth Legislative Assembly urges the 118<sup>th</sup> Congress to take favorable action on S. 849 and H.R. 7972, to provide for the inclusion on the Vietnam Veterans Memorial Wall the names of the lost crew members of the U.S.S. Frank E. Evans; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward a copy of this resolution to the President of the United States, the Majority and Minority Leaders of the United States Senate, the Majority and Minority Leaders of the United States House of Representatives, and to each member of the North Dakota Congressional Delegation.

Filed March 13, 2023

## CHAPTER 605

### HOUSE CONCURRENT RESOLUTION NO. 3009

(Representatives Mock, K. Anderson, Beltz, Dakane, Grueneich, Hagert, Murphy, D. Ruby)  
(Senators Clemens, Conley, Paulson, Rummel)

A concurrent resolution designating the second week in May of 2023-24 as "North Dakota Share the Road Safety Week".

**WHEREAS**, walking, running, and bicycling provide an economical form of transportation, recreation, and physical exercise; and

**WHEREAS**, increasing the number of residents in the state who enjoy walking, running, and bicycling as a pleasant pastime promotes the health benefits of an active lifestyle; and

**WHEREAS**, local and tribal communities enjoy the economic benefits of walking, running, and bicycling events; and

**WHEREAS**, knowledge and understanding of road safety issues, including injury prevention, the importance of laws and ordinances, and sharing the road with motorists, are necessary for pedestrians and bike riders of all ages and levels of experience; and

**WHEREAS**, the biking, walking, and running communities of North Dakota are eager to engage in recreational and educational activities and to partner in generating public awareness of the need to engage in safe practices for all types of traffic on roads; and

**WHEREAS**, to mark the observance of "North Dakota Share the Road Safety Week", an effort should be made to recognize those who have been killed or injured in collisions involving motor vehicles, bicycles, or pedestrians; promote the ideals of sharing the roads; and to develop and promote collaborative measures focused on safety, saving lives, and preventing injury on North Dakota road systems;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-eighth Legislative Assembly designates the second week in May of 2023-24 as "North Dakota Share the Road Safety Week"; and

**BE IT FURTHER RESOLVED**, that this resolution be entered in the journal.

Filed March 24, 2023

## CHAPTER 606

### HOUSE CONCURRENT RESOLUTION NO. 3010

(Representatives S. Olson, K. Anderson, Henderson, Meier, Novak, Rohr, Steiner, VanWinkle)

A concurrent resolution urging public schools and public entities, including agencies or departments that collect vital statistics, to protect women's rights by distinguishing between the sexes according to biological sex at birth for the purpose of providing equal opportunities and ensuring the privacy and safety of women and girls.

**WHEREAS**, a male and a female possess unique and immutable biological differences that manifest prior to birth and increase as the individual ages and experiences puberty; and

**WHEREAS**, biological differences between the sexes mean that only a female is able to become pregnant, give birth, and breastfeed children; and

**WHEREAS**, biological differences between the sexes mean that a male is, on average, bigger, stronger, and faster than a female; and

**WHEREAS**, biological differences between the sexes leave a female more physically vulnerable than a male to specific forms of violence, including sexual violence; and

**WHEREAS**, females have suffered historically from discrimination in education, athletics, and employment; and

**WHEREAS**, when it comes to sex, "equal" does not mean "same" or "identical" and separate is not inherently unequal; and

**WHEREAS**, biological differences between the sexes are enduring and may warrant the creation of separate social, educational, athletic, or other spaces to ensure safety or allow members of each sex to succeed and thrive; and

**WHEREAS**, inconsistencies in court rulings and policy initiatives with respect to the definitions of "sex", "male", "female", "man", and "woman" have led to endangerment of single-sex spaces and resources, thereby necessitating clarification of certain terms; and

**WHEREAS**, there are legitimate reasons to distinguish between the sexes with respect to athletics, prisons and other detention facilities, domestic violence shelters, rape and abuse crisis centers, locker rooms, restrooms, and other areas where safety and privacy are implicated; and

**WHEREAS**, policies and laws that distinguish between the sexes are subject to intermediate constitutional scrutiny, which forbids unfair discrimination against similarly situated males and females but allows the law to distinguish between the sexes if distinctions are substantially related to important governmental objectives;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF**

**REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-eighth Legislative Assembly urges public schools and public entities, including agencies or departments that collect vital statistics, to protect women's rights by distinguishing between the sexes according to biological sex at birth for the purpose of providing equal opportunities and ensuring the privacy and safety of women and girls; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward a copy of this resolution to the Superintendent of Public Instruction, the superintendent of each school district in the state, and the Commissioner of the Department of Health and Human Services.

Filed April 6, 2023

## CHAPTER 607

### HOUSE CONCURRENT RESOLUTION NO. 3011

(Representative Weisz)  
(Senator Lee)

A concurrent resolution urging the Insurance Commissioner to facilitate a change in the essential health benchmark plan for future Affordable Care Act health plans.

**WHEREAS**, the state has the opportunity to make changes in the essential health benchmark plan for future plan years in accordance with federal requirements and through coordination with federal contacts; and

**WHEREAS**, the Insurance Commissioner should add to the essential health benchmark plan restricted cost-sharing for diabetes, providing a limited cost-sharing for a 30-day supply of covered insulin drugs, not to exceed \$25, regardless of the quantity or type of insulin, and of covered medical supplies for insulin dosing and administration, not to exceed \$25, regardless of the quantity or manufacturer of supplies; and

**WHEREAS**, the Insurance Commissioner should add to the essential health benchmark plan coverage for one hearing aid per hearing-impaired ear every 36 months or more often if there is a significant change in the insured's hearing status as determined by the licensed physician or audiologist; and

**WHEREAS**, the Insurance Commissioner should add to the essential health benchmark plan coverage for dietary or nutritional screening, counseling, and therapy for obesity, diabetes-related diagnosis, or a chronic illness or condition that could be managed through nutritional or weight loss programs, up to 12 sessions every policy year, if prescribed by the insured's physician; and

**WHEREAS**, the Insurance Commissioner should add to the essential health benchmark plan coverage for diagnosis and treatment of periodontal disease in acute or chronic disease state if recommended by a board-certified medical practitioner based on health-related impacts or on further deterioration in disease state due to gum disease; and

**WHEREAS**, the Insurance Commissioner should add to the essential health benchmark plan coverage for position emission tomography scans for an insured who has a prostate cancer diagnosis, including an insured who is in remission or who is cured, which would include at least two different types of position emission tomography scans upon initial diagnosis if requested by a physician, and one position emission tomography scan every 6 months for the life of the insured; and

**WHEREAS**, the Insurance Commissioner should add to the essential health benchmark plan steps to address the opioid epidemic, including limiting the first fill of opioid prescriptions to 7 days, removing barriers for drugs used in the treatment of opioid use disorder or opioid replacement drugs; and requiring coverage for an easy-to-use overdose antidote when prescribing high-dose opioids;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF**

**REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-eighth Legislative Assembly urges the Insurance Commissioner to facilitate a change in the essential health benchmark plan for future Affordable Care Act health plans; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward a copy of this resolution to the Insurance Commissioner.

Filed March 13, 2023

## CHAPTER 608

### HOUSE CONCURRENT RESOLUTION NO. 3013

(Representatives Novak, D. Anderson, Bosch, Heinert, Mock, J. Olson, Porter,  
Thomas)  
(Senator Patten)

A concurrent resolution recognizing December 6<sup>th</sup> as "Miner's Day" and urging the federal government to refrain from enacting regulations that threaten the reliability and affordability of electric power in North Dakota and to increase support for research, development, and deployment for next generation carbon-based energy generation.

**WHEREAS**, North Dakota has at least an 800-year supply of economically recoverable lignite coal at current production rates and is the second largest oil producer in the United States; and

**WHEREAS**, because of energy-intensive industries, weather extremes, and transportation requirements, North Dakota is ranked third in the nation in energy expenditures per capita based on 2020 data used in the latest rankings from the United States Energy Information Administration; and

**WHEREAS**, the North Dakota lignite coal industry generated over 63 percent of the electricity in the state in 2020 according to the United States Energy Information Administration and provides affordable electricity to more than 2 million families throughout the upper Midwest; and

**WHEREAS**, the lignite coal industry contributes more than \$5.4 billion in total business activity to North Dakota; and

**WHEREAS**, the lignite coal industry employs 13,000 individuals with some of the highest wages in the state; and

**WHEREAS**, economic analysis performed by North Dakota State University agribusiness and applied economics researchers estimates a new 500 megawatt, coal-based electric generating facility would create \$54.3 million in personal income, \$40 million in retail sales, and \$173.7 million in total business activity each year; and

**WHEREAS**, the current value of the state's existing coal-based infrastructure is \$18.6 billion; and

**WHEREAS**, current federal regulations represent a de facto ban on the construction of new, efficient, and cost-effective, coal-based power plants that could provide the needed dispatchable, reliable, clean, and affordable electricity and threaten the continued operation of existing coal-based power plants; and

**WHEREAS**, federal policy gives other electric generation resources a significant competitive advantage; and

**WHEREAS**, uncertainty surrounding federal regulations continues to discourage investment in coal-based facilities; and

**WHEREAS**, North Dakota serves as a model for responsible production of its natural resources, including upholding a longstanding practice of reclaiming mined land to a condition equal to or better than the condition of the land before the land was mined; and

**WHEREAS**, North Dakota continues to be 1 of only 17 states meeting all federal ambient air quality standards and 1 of only 4 states which has never violated federal ambient air quality standards; and

**WHEREAS**, affordable, reliable power is the backbone of North Dakota's established and emerging industries; and

**WHEREAS**, advancements in carbon capture utilization and storage can unlock enormous potential for the state's energy industries and economy;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-eighth Legislative Assembly recognizes December 6<sup>th</sup> as "Miner's Day" and urges the federal government to refrain from enacting regulations that threaten the reliability and affordability of electric power in North Dakota and to increase support for research, development, and deployment for next generation carbon-based energy generation; and

**BE IT FURTHER RESOLVED**, that the federal government is urged to withdraw and revise regulations and other administrative actions that negatively impact the ability to use North Dakota's lignite coal reserves for affordable and reliable domestic power; and

**BE IT FURTHER RESOLVED**, that the federal government is urged to work with the state, the North Dakota Congressional Delegation, and the North Dakota lignite coal industry to design and implement regulatory programs based on sound science with inputs from local sources, recognize the status of existing technology, and develop timelines that make economic sense for the producers and consumers of electricity and byproducts derived from North Dakota lignite; and

**BE IT FURTHER RESOLVED**, that the federal government is urged to increase its partnership with the state of North Dakota and industry to develop technological solutions to enable the continuation of lignite-based electric generation; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States, the Administrator of the United States Environmental Protection Agency, the Secretary of the Department of Energy, the Secretary of the Department of the Interior, and each member of the North Dakota Congressional Delegation.

Filed March 24, 2023

## CHAPTER 609

### HOUSE CONCURRENT RESOLUTION NO. 3014

(Representatives Novak, D. Anderson, Hagert, Heinert)

A concurrent resolution urging the Southwest Power Pool and Midcontinent Independent System Operator to take prompt and decisive actions to maintain the reliability of the Bulk Power System by correcting market failures that have allowed capacity retirements to outpace replacement.

**WHEREAS**, the welfare of the citizens and economic security of this state depend on the affordability, reliability, and resilience of the electric power supply; and

**WHEREAS**, the North American Electric Reliability Corporation's 2022 long-term reliability assessment shows several United States regions with serious generation capacity shortfalls and a failure to meet established reliability criteria, and the Midcontinent Independent System Operator (MISO) and the Southwest Power Pool (SPP), which serve North Dakota, have experienced multiple maximum generation alerts in recent years and load-shedding events to address capacity shortfalls; and

**WHEREAS**, the Legislative Assembly is greatly concerned about the ability of regional grid operators to meet peak demand during extreme weather events because dispatchable thermal generation resources are retiring much faster than generating capacity is being replaced, and this gap will continue to widen as weather-dependent generation saturates the grid; and

**WHEREAS**, the trend of announced dispatchable generation retirements is scheduled to increase in the 15-state MISO to more than 30 gigawatts by 2030, not including retirements caused by new Environmental Protection Agency rules; and

**WHEREAS**, electric power markets are distorted significantly by direct and indirect subsidies that erode the economics of dispatchable thermal electric power plants and increase the likelihood of early retirement of the power plants; and

**WHEREAS**, state and federal renewable energy mandates further drive investment decisions toward weather-dependent generation without considering the full impacts to the system; and

**WHEREAS**, the Biden Administration's 2035 clean energy mandate fails to consider the land use impacts, permitting processes, supply chains, and construction time lines necessary to build new generation and transmission infrastructure needed to meet the goals and reliably operate the Bulk Power System; and

**WHEREAS**, North Dakota supports developing thermal and renewable resources in tandem as well as new technologies, such as hydrogen and carbon capture and storage to maintain an affordable, reliable, and resilient grid that is essential to a strong economy, safe communities, and geopolitical security;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-eighth Legislative Assembly urges the SPP and MISO to take prompt and decisive actions to maintain the reliability of the Bulk Power System by correcting market failures that have allowed capacity retirements to outpace replacement; and

**BE IT FURTHER RESOLVED**, because North Dakota does not have renewable energy mandates that drive policies at the regional transmission organization level but has aggressive carbon neutral goals by 2030 which involve commercializing carbon capture storage technology, the Public Service Commission and North Dakota Transmission Authority are urged to advocate at MISO and SPP for policies that fairly compensate dispatchable energy resources, properly value all generators based on their contributions to grid reliability, and ensure the availability of generation resources at all hours to meet demand; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward a copy of this resolution to the Federal Energy Regulatory Commission, Public Service Commission, North Dakota Transmission Authority, North Dakota Congressional Delegation, Midcontinent Independent System Operator, and Southwest Power Pool.

Filed April 18, 2023

## CHAPTER 610

### HOUSE CONCURRENT RESOLUTION NO. 3015

(Representatives Mock, Bosch, Ista, Mitskog, Nelson, Novak, Porter, Richter, Roers Jones)  
(Senators Bekkedahl, Kessel, Patten)

A concurrent resolution urging the federal government to recognize natural gas and nuclear energy as environmentally sustainable economic activities.

**WHEREAS**, reliable, clean, and affordable energy is vital to the economic growth and overall interests of the United States; and

**WHEREAS**, natural gas is an essential part of America's energy mix with 50 percent of the homes in the United States using natural gas for home and water heating and 39 percent of all electricity generated in the United States being generated by natural gas; and

**WHEREAS**, natural gas is a renewable fuel generated from multiple sources across all regions of the United States and is the cleanest fossil fuel on earth; and

**WHEREAS**, the abundance of clean-burning natural gas in the United States is a source of tremendous economic benefits for our country, directly supporting thousands of jobs, improving household disposable income, and contributing to state and local revenues, giving the United States a global energy advantage; and

**WHEREAS**, as of July 1, 2022, 92 nuclear reactors were operating at 54 nuclear power plants in 28 states, which supply about 20 percent of total annual electricity and since 1990, the United States has been the world's largest producer of nuclear power, accounting for more than 30 percent of worldwide nuclear generation of electricity; and

**WHEREAS**, the absence of further lifetime extensions and new projects to extend the life of nuclear reactors could result in an additional four billion tons of carbon dioxide emissions; and

**WHEREAS**, plans to close existing facilities would result in approximately 25 percent of existing nuclear capacity being lost; and

**WHEREAS**, nuclear power is the second largest source of low-carbon electricity and the implications of fading nuclear energy are numerous, including electricity security concerns; and

**WHEREAS**, on July 6, 2022, the European Parliament authorized the Complementary Delegated Act, which adds natural gas and nuclear power plants to the European Union Taxonomy and labels investments in natural gas and nuclear power plants as climate-friendly;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-eighth Legislative Assembly urges the federal government to recognize natural gas and nuclear energy as environmentally sustainable economic activities; 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 March 24, 2023

## CHAPTER 611

### HOUSE CONCURRENT RESOLUTION NO. 3016

(Representatives Vigesaa, Boschee, Lefor)  
(Senators Bekkedahl, Hogan, Hogue)  
(Approved by the Delayed Bills Committee)

A concurrent resolution declaring February 9, 2023, as "Giving Hearts Day."

**WHEREAS**, Giving Hearts Day was started in 2008 by the Dakota Medical Foundation and Impact Foundation as the first 24-hour regional giving event of its kind with the Alex Stern Family Foundation joining as a cohost in 2014; and

**WHEREAS**, givingheartsday.org is a gateway for North Dakota citizens and beyond to support hundreds of charitable organizations doing important work improving health and quality of life across our state; and

**WHEREAS**, the Dakota Medical, Impact, and Alex Stern Family Foundations jointly support the training and coaching of nonprofit organizations to dramatically improve and expand their impact in their communities; and

**WHEREAS**, since inception, Giving Hearts Day has raised more than \$138 million to support regional charities, and last year, 550 charities received \$26.6 million through 41,000 caring donors who gave 90,000 gifts and made 805 volunteer pledges; and

**WHEREAS**, Giving Hearts Day 2023 includes nearly 570 charitable causes, and offers more than \$250,000 in awards and incentives, and spans the entire state of North Dakota and northwestern Minnesota; and

**WHEREAS**, Giving Hearts Day has set a bold goal to build the most generous region in the nation by 2025, supporting North Dakota in becoming the number one state for volunteerism and number one state for donated goods, and making Giving Hearts Day the number one giving day in the nation;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-eighth Legislative Assembly declares February 9, 2023, as "Giving Hearts Day"; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward a copy of this resolution to the Dakota Medical Foundation, Impact Foundation, and the Alex Stern Family Foundation.

Filed February 10, 2023

## CHAPTER 612

### HOUSE CONCURRENT RESOLUTION NO. 3017

(Representatives Dobervich, Beltz, Dakane, Finley-DeVille, McLeod, Strinden)  
(Senators Hogan, Mathern, K. Roers)

A concurrent resolution directing the Legislative Management to consider studying the increasing need for inpatient mental health care for children and whether there are adequate home- and community-based care and outpatient services for the number of children and the location of need.

**WHEREAS**, to accurately study the need for inpatient mental health care for children it is necessary to have data regarding what mental health services are available in the state for children with mental health treatment needs and where these services are offered; and

**WHEREAS**, to accurately study the need for inpatient mental health care for children it is necessary to have data regarding how many children in the state are in need of mental health services, how many children are on waiting lists for services or denied services due to lack of service availability, and how many children are being sent outside this state to receive these services due to lack of service availability; and

**WHEREAS**, to accurately study the need for inpatient mental health care for children it is necessary to have data regarding the cost of providing these services in state and outside this state and how much of this cost is borne by the state and how much is borne by the families; and

**WHEREAS**, to accurately study the need for inpatient mental health care for children it is necessary to investigate the circumstances under which parents are forced to give up guardianship of children for the children to receive services; and

**WHEREAS**, there are holistic impacts on children and their families when children are placed outside this state to receive inpatient mental health care; and

**WHEREAS**, if there is a gap in the need for inpatient mental health care for children and the services available, it is necessary to develop recommendations to address this gap;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management consider studying the increasing need for inpatient mental health care for children and whether there are adequate home- and community-based care and outpatient services for the number of children and the location of need; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-ninth Legislative Assembly.

Filed April 18, 2023

## CHAPTER 613

### HOUSE CONCURRENT RESOLUTION NO. 3018

(Representatives Conmy, Nelson)  
(Senator Hogan)

A concurrent resolution directing the Legislative Management to consider studying strategies to increase the number of North Dakotans who receive health benefits coverage.

**WHEREAS**, the Kaiser Family Foundation reports 2021 data for North Dakota indicates 57.5 percent of North Dakotans received health care benefits through an employer, 7.9 percent through nongroup coverage, 9.8 percent through Medicaid, 14.4 percent through Medicare, and 2.7 percent through the military, and 7.7 percent were uninsured; and

**WHEREAS**, North Dakota is facing a workforce shortage, with an unemployment rate of approximately 2.3 percent; and

**WHEREAS**, the state can strengthen its partnership with private businesses by investigating innovative opportunities to increase health benefits coverage, helping to draw workers to North Dakota; and

**WHEREAS**, the state can leverage federal funds to increase health benefits coverage for low-income workers through Medicaid, Medicaid Expansion, and the children's health insurance program; and

**WHEREAS**, North Dakota's natural resources place the state in a unique position to fund initiatives to increase access to health benefits coverage;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management consider studying strategies to increase the number of North Dakotans who receive health benefits coverage; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-ninth Legislative Assembly.

Filed April 18, 2023

## CHAPTER 614

### HOUSE CONCURRENT RESOLUTION NO. 3021

(Representatives Dobervich, Davis, Fegley, Mock, Nelson, Schneider)  
(Senators Hogan, K. Roers)

A concurrent resolution directing the Legislative Management to consider studying whether the services provided in the state relating to the care and treatment of individuals with brain injury are adequate, including a review of the state's existing programs to identify potential pathways and treatment options for individuals with brain injury, gap identification with programmatic recommendations identifying potential strategies to address the gaps, potential federal and state funding sources for services, and developing a method to evaluate the efficacy of new programs.

**WHEREAS**, in the United States, 13.5 million people live with a disability because of a traumatic brain injury; and

**WHEREAS**, the cornerstone of the management of traumatic brain injury is the intensive care treatment of these patients with careful attention paid to the airway, oxygenation, and adequate hemodynamic support to avoid the secondary injuries that are associated with events such as hypoxia and hypotension; and

**WHEREAS**, brain injury services and efforts of other states, including the planning and implementation process for any new or modified programs, may serve as models for services offered in this state; and

**WHEREAS**, if new brain injury services are implemented in the state, it is important to know the impact of the implementation, including the number of individuals impacted, the cost of the services, and the timeline for implementation;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management consider studying whether the services provided in the state relating to the care and treatment of individuals with brain injury are adequate, including a review of the state's existing programs to identify potential pathways and treatment options for individuals with brain injury, gap identification with programmatic recommendations identifying potential strategies to address the gaps, potential federal and state funding sources for services, and developing a method to evaluate the efficacy of new programs; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-ninth Legislative Assembly.

Filed April 18, 2023

## CHAPTER 615

### HOUSE CONCURRENT RESOLUTION NO. 3022

(Representatives Davis, Dakane, Dobervich, Fegley, Finley-DeVille, Henderson, Holle, Nelson, Schreiber-Beck)  
(Senators Mathern, Weston)

A concurrent resolution directing the Legislative Management to consider studying and clarifying the roles of the State Board of Public School Education, the Superintendent of Public Instruction, the boards of public school districts, and the North Dakota High School Activities Association, as they relate to proper spectator conduct, including the clarification of expectations and consequences for violating those expectations, and the promotion of good sportsmanship and good citizenship, including embracing diversity.

**WHEREAS**, unsportsmanlike conduct at high school activities includes racial discrimination and harassment directed at players by spectators, including behavior among rival spectator groups which can escalate into disruptions and violence in the stands; and

**WHEREAS**, countless instances of racial harassment and race-based name calling during high school sporting events have occurred, and continue to occur, whether subtle or flagrant; and

**WHEREAS**, recently, student spectators from a North Dakota high school verbally taunted and physically mocked student athletes from a tribal high school located in North Dakota; and

**WHEREAS**, on January 31, 2023, student spectators from a North Dakota high school taunted a student athlete of color from another North Dakota high school by imitating monkey sounds and directing racial slurs at the player during a basketball game; and

**WHEREAS**, public outcry and media coverage is prevalent, yet consequences for harassment are unclear; and

**WHEREAS**, all student athletes deserve protection from discriminatory and racist behaviors; and

**WHEREAS**, student spectators engaging in unsportsmanlike conduct, including racist conduct, and the schools those students represent deserve to be held accountable for inappropriate behavior;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management consider studying and clarifying the roles of the State Board of Public School Education, the Superintendent of Public Instruction, the boards of public school districts, and the North Dakota High School Activities Association, as they relate to proper spectator conduct, including the clarification of

expectations and consequences for violating those expectations, and the promotion of good sportsmanship and good citizenship, including embracing diversity; and

**BE IT FURTHER RESOLVED**, that the Legislative Management may receive input from a task force which may include:

1. One member of the State Board of Public School Education;
2. The Superintendent of Public Instruction or the Superintendent's designee;
3. Three members of the boards of public school districts appointed by the North Dakota School Boards Association;
4. The President of the North Dakota High School Activities Association or the President's designee;
5. One representative from each of the four tribes that have schools located in North Dakota, appointed by each Tribal Chair; and
6. One parent appointed by the Indian Education Director of Bismarck Public Schools; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-ninth Legislative Assembly.

Filed April 18, 2023

## CHAPTER 616

### HOUSE CONCURRENT RESOLUTION NO. 3023

(Representatives Ista, Klemin, O'Brien, Roers Jones, Schneider)  
(Senators Barta, Cleary, Dwyer, Meyer)

A concurrent resolution encouraging the judicial branch to consider forming a task force to study the retention of University of North Dakota law graduates in the state, including an evaluation of alternative pathways to bar admission that ensure attorney competence.

**WHEREAS**, the state is experiencing a shortage of attorneys, particularly in rural areas, and solutions are being explored to alleviate the attorney shortage; and

**WHEREAS**, the University of North Dakota School of Law is the only institution in the state that grants the degree of juris doctor; and

**WHEREAS**, the majority of attorneys licensed to practice law in North Dakota are graduates of the University of North Dakota School of Law; and

**WHEREAS**, any requirements for admission to the bar as a licensed attorney in the state of North Dakota must ensure that all licensed attorneys are highly competent to practice law in this state; and

**WHEREAS**, it is in the best interest of North Dakota to evaluate available alternative methods for assessing the competency of applicants for licensure as attorneys in the state and determine whether alternative assessments would provide an incentive for more University of North Dakota School of Law graduates to practice in North Dakota while not compromising the quality of attorneys in the state;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the judicial branch is encouraged to consider forming a task force to study the retention of University of North Dakota law graduates in the state, including an evaluation of alternative pathways to bar admission that ensure attorney competence; and

**BE IT FURTHER RESOLVED**, that the task force may include representatives from the:

1. Judicial branch;
2. State Board of Law Examiners;
3. Legislative branch;
4. University of North Dakota School of Law; and
5. State Bar Association of North Dakota; and

**BE IT FURTHER RESOLVED**, that the judicial branch is encouraged to report any findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-ninth Legislative Assembly; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the Chief Justice of the North Dakota Supreme Court, the Clerk of Court for the North Dakota Supreme Court, the President of the State Board of Law Examiners, the Dean of the University of North Dakota School of Law, and the President of the State Bar Association of North Dakota.

Filed April 18, 2023

## CHAPTER 617

### HOUSE CONCURRENT RESOLUTION NO. 3025

(Representatives Klemin, Hanson, Lefor, Roers Jones, Schneider, Vigesaa)  
(Senators Bekkedahl, Dwyer, Hogue, Larson)

A concurrent resolution directing the Legislative Management to consider studying the feasibility and desirability of renovating and constructing an addition to the Liberty Memorial Building or constructing a new building on the grounds of the state Capitol to serve as a new Supreme Court building.

**WHEREAS**, the idea of housing the Supreme Court in a stand-alone building is not a new concept; and

**WHEREAS**, since at least 1924, the plans for the Capitol grounds included a separate "Temple of Justice" that would mirror the architectural design of the Liberty Memorial Building; and

**WHEREAS**, as a result of the Supreme Court's expanding space needs, in 2015, then-Governor Jack Dalrymple proposed appropriating \$40 million to repurpose the Liberty Memorial Building into a Supreme Court building; and

**WHEREAS**, the 2015 proposal did not advance due to the rapid downturn in the economy which occurred at that time; and

**WHEREAS**, locating the Supreme Court in the Liberty Memorial Building would be a homecoming for the Court;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management consider studying the feasibility and desirability of renovating and constructing an addition to the Liberty Memorial Building or constructing a new building on the grounds of the state Capitol to serve as a new Supreme Court building; and

**BE IT FURTHER RESOLVED**, the study include input from the Supreme Court and the Office of Management and Budget; and

**BE IT FURTHER RESOLVED**, the study consider the feasibility and desirability of relocating the State Library or constructing a new building on the grounds of the State Capitol for the State Library, and the relocation of other agencies occupying the Liberty Memorial Building; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-ninth Legislative Assembly.

Filed April 18, 2023

## CHAPTER 618

### HOUSE CONCURRENT RESOLUTION NO. 3026

(Representatives Hanson, Klemin)  
(Senator Larson)

A concurrent resolution directing the Legislative Management to consider studying improving re-entry outcomes for incarcerated adults and youth.

**WHEREAS**, North Dakota releases about 1,400 prisoners each year from state prisons and thousands more from county jails; and

**WHEREAS**, North Dakota has a range of public and private programs that assist formerly incarcerated individuals in their transition back to society, including services related to employment, housing, and behavioral health services; and

**WHEREAS**, identifying improvements in re-entry services could reduce North Dakota's recidivism rate of 40.3 percent, which would save taxpayer dollars and improve lives; and

**WHEREAS**, North Dakota has a workforce shortage with more than 30,000 open jobs, so businesses would benefit if the state helped former offenders enter and stay in the workforce;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management consider studying improving re-entry outcomes for incarcerated adults and youth; and

**BE IT FURTHER RESOLVED**, the study include an assessment of current public and private re-entry services, policies, practices, statutes, data, and resource allocation with the goal of identifying opportunities to implement research-based strategies proven to reduce recidivism, improve education and employment outcomes, and maximize resources for the greatest public safety and return on taxpayer dollars; and

**BE IT FURTHER RESOLVED**, the assessment include examining re-entry services in the areas of correctional supervision, employment, job training, housing, transportation, support services, and behavioral health services; levels of collaboration across service systems; and current disparities in re-entry outcomes; and

**BE IT FURTHER RESOLVED**, that the Legislative Management may develop a working group to oversee the study which includes legislators, representatives from nonprofit organizations that assist with re-entry, community members with re-entry experience, and representatives from the Department of Corrections and Rehabilitation, county jails, the Behavioral Health Division of the Department of Health and Human Services, the Supreme Court, job service or business community, adult and postsecondary education institutions, and tribal nations; and

**BE IT FURTHER RESOLVED**, in conducting the study, the Legislative Management may seek technical assistance, as appropriate, from the Council of State Governments' Justice Center or the Crime and Justice Institute; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-ninth Legislative Assembly.

Filed April 18, 2023

## CHAPTER 619

### HOUSE CONCURRENT RESOLUTION NO. 3030

(Representatives Boschee, Brandenburg, Davis, Kempenich, Meier, Mitskog, Nelson)  
(Senators Kreun, Mathern)

A concurrent resolution directing the Legislative Management to consider studying homelessness and barriers to housing, including consideration of the effectiveness of the RentHelp program; the provision of housing financial support; legal assistance programs available to tenants; state, local, or federal educational programs for tenants and landlords regarding rights and responsibilities; month-to-month eviction rates by human service zone area; definitions of homelessness or homeless rates used by government entities; barriers to accessing housing; the manner in which homeless children receive services; historical rates of homelessness; and how a community based approach to homelessness may reduce rates of homelessness.

**WHEREAS**, in 2022, 5,622 people experienced homelessness in North Dakota, 1,341 of whom were under the age of 19; and

**WHEREAS**, 610 people in the state were identified as homeless in one night in a 2022 Point-in-Time count; and

**WHEREAS**, the state does not have an entity designated to provide assistance to renters to navigate leases; and

**WHEREAS**, the state received an estimated \$363.7 million in COVID-19 relief funds to provide housing, rent, homelessness, and utility support to North Dakotans; and

**WHEREAS**, there are multiple barriers that may impact an individual's ability to rent or own a home;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management consider studying homelessness and barriers to housing, including consideration of the effectiveness of the RentHelp program; the provision of housing financial support; legal assistance programs available to tenants; state, local, or federal educational programs for tenants and landlords regarding rights and responsibilities; month-to-month eviction rates by human service zone area; definitions of homelessness or homeless rates used by government entities; barriers to accessing housing; the manner in which homeless children receive services; historical rates of homelessness; and how a community based approach to homelessness may reduce rates of homelessness; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-ninth Legislative Assembly.

Filed March 22, 2023

## CHAPTER 620

### HOUSE CONCURRENT RESOLUTION NO. 3034

(Representatives Mock, D. Anderson, Ista, Roers Jones, M. Ruby)  
(Senators Burckhard, Rummel)

A concurrent resolution directing the Legislative Management to consider studying sustainable energy policies to maximize the economic viability of existing energy sources, assess future demands on electricity in the state, and determine the feasibility of advanced nuclear energy development and transmission in the state.

**WHEREAS**, a review of existing state regulations is necessary in order to enable the construction and operation of advanced nuclear reactors; and

**WHEREAS**, evaluating the economic feasibility, siting, and development for new advanced nuclear reactors and the safety and waste stream resulting from the construction and operation of advanced nuclear reactors would be valuable information for the development of energy industries in the state; and

**WHEREAS**, maintaining the reliability of the electric grid includes evaluating the reliability and potential benefits of nuclear energy; and

**WHEREAS**, the nuclear power industry supports many jobs throughout the United States and contributes to the local and national economy; and

**WHEREAS**, nuclear power plants operate safely and at a higher capacity than renewable energy sources and fossil fuels;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management consider studying sustainable energy policies to maximize the economic viability of existing energy sources, assess future demands on electricity in the state, and determine the feasibility of advanced nuclear energy development and transmission in the state; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-ninth Legislative Assembly.

Filed April 18, 2023

## CHAPTER 621

### HOUSE CONCURRENT RESOLUTION NO. 3035

(Representatives Satrom, Grueneich, Karls, Ostlie)

(Senators Conley, Dwyer, Paulson)

(Approved by the Delayed Bills Committee)

A concurrent resolution commending Taiwan's vibrant democracy, celebrating the 37<sup>th</sup> anniversary of North Dakota's sister-state relationship with Taiwan, recognizing North Dakota's trade relationship and academic exchange program with Taiwan, supporting the U.S.-Taiwan Initiative on 21<sup>st</sup>-Century Trade, and advocating for Taiwan's inclusion in the Indo-Pacific Economic Framework for Prosperity and international organizations that are important to the health, safety, and well-being of Taiwan's people and the world.

**WHEREAS**, the State of North Dakota and Taiwan entered a sister-state relationship in 1986; and

**WHEREAS**, the State of North Dakota and Taiwan have a long-standing and mutually beneficial relationship, as both partners enjoy close ties in two-way trade; and

**WHEREAS**, Taiwan and the United States have conducted negotiations under the U.S.-Taiwan Initiative on 21<sup>st</sup>-Century Trade launched on June 1, 2022, to incentivize innovation and inclusive economic growth between North Dakota and Taiwan; and

**WHEREAS**, Taiwan, as a contributor to peace and stability in the global community, a provider of aid, and a high-tech manufacturing hub, is seeking to meaningfully participate in the World Health Organization, United Nations Framework Convention on Climate Change, International Civil Aviation Organization, and the Indo-Pacific Economic Framework for Prosperity launched by the United States on May 23, 2022;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the 68<sup>th</sup> Legislative Assembly commends Taiwan's vibrant democracy, celebrates the 37<sup>th</sup> anniversary of North Dakota's sister-state relationship with Taiwan, recognizes North Dakota's trade relationship and academic exchange program with Taiwan, supports the U.S.-Taiwan Initiative on 21<sup>st</sup>-Century Trade, and advocates for Taiwan's inclusion in the Indo-Pacific Economic Framework for Prosperity and international organizations that are important to the health, safety, and well-being of Taiwan's people and the world; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States, United States Secretary of State, Governor of the Taiwan Provincial Government, Prime Minister of Australia, Prime Minister of Brunei Darussalam, President of India, President of Indonesia, Prime Minister of Japan, President of the Republic of Korea, Prime Minister of Malaysia,

Prime Minister of New Zealand, President of the Philippines, President of the Republic of Singapore, Prime Minister of Thailand, President of the Socialist Republic of Vietnam, Chair of the Executive Board of the World Health Organization, Executive Secretary of the United Nations Framework Convention on Climate Change, Secretary General of the International Civil Aviation Organization, and the Director General of the Taipei Economic and Cultural Office in Denver, Colorado.

Filed April 25, 2023

## CHAPTER 622

### HOUSE CONCURRENT RESOLUTION NO. 3036

(Representatives Weisz, Klemin, Lefor, Nelson, Toman)

(Senators Hogue, Klein)

(Approved by the Delayed Bills Committee)

A concurrent resolution urging Congress not to support legislation, or other efforts, relating to the adoption of a Central Bank Digital Currency in the United States.

**WHEREAS**, on March 9, 2022, President Joseph R. Biden issued Executive Order 14067, *Ensuring Responsible Development of Digital Assets*, establishing a broad interagency effort to study and develop a United States Central Bank Digital Currency (CBDC); and

**WHEREAS**, Executive Order 14067 established an interagency effort to develop "*Policy and Actions Related to United States Central Bank Digital Currencies*"; and

**WHEREAS**, Executive Order 14067 states, "within 180 days of the date of this order, the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, the Secretary of Commerce, the Secretary of Homeland Security, the Director of the Office of Management and Budget, the Director of National Intelligence, and the heads of other relevant agencies, shall submit to the President a report on the future of money and payment systems"; and

**WHEREAS**, Executive Order 14067 states "the term 'central bank digital currency' or 'CBDC' refers to a form of digital money or monetary value, denomination in the national unit of account, that is a direct liability of the central bank"; and

**WHEREAS**, Executive Order 14067 requires the Attorney General, together with the Secretary of the Treasury and the Chairman of the Federal Reserve, provide the President a legislative proposal for a CBDC within 210 days of the executive order; and

**WHEREAS**, The Federal Reserve Bank of New York and 10 financial institutions completed testing of certain features related to a CBDC in 2022; and

**WHEREAS**, the CBDC under development and testing pursuant to Executive Order 14067 will include programmable design features that will control the ability of a person to freely utilize the CBDC; and

**WHEREAS**, a United States CBDC raises significant concerns over privacy for individuals and businesses in North Dakota; and

**WHEREAS**, the adoption of a CBDC by the federal government would be an unacceptable expansion of federal authority; and

**WHEREAS**, the adoption of a CBDC by the federal government would hand unprecedented control over the lives, freedoms, choices, and sovereignty of the people of North Dakota to the Federal Reserve;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF**

**REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Sixty-eighth Legislative Assembly urges Congress not to support legislation, or other efforts, relating to the adoption of a Central Bank Digital Currency in the United States; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the President of the United States, the Speaker of the United States House of Representatives, the Majority Leaders of the United States Senate and the United States House of Representatives, the Chairman of the Federal Reserve, the Secretary of the Treasury, and each member of the North Dakota Congressional Delegation.

Filed April 18, 2023

# SENATE CONCURRENT RESOLUTIONS

## CHAPTER 623

### SENATE CONCURRENT RESOLUTION NO. 4002

(Senators Mathern, Estenson, Weston)  
(Representatives Davis, D. Johnson, Vetter)

A concurrent resolution designating Dr. Denise K. Lajimodiere as Poet Laureate of North Dakota.

**WHEREAS**, Larry Woiwode was designated as Poet Laureate of the State of North Dakota by the Fifty-fourth Legislative Assembly and served with honor and distinction in that capacity until his death in April 2022; and

**WHEREAS**, Dr. Denise K. Lajimodiere was born in 1951 on the Turtle Mountain Indian Reservation where she lived until her family relocated to Oregon, began writing poetry at the age of 10 having her first poem published, and continued writing throughout high school, having poems published in Franklin High School's anthology "The Conceited Scribbler"; and

**WHEREAS**, Dr. Denise K. Lajimodiere returned to North Dakota in 1972 to complete her teaching degree at the University of North Dakota and later completed her master's and doctorate degrees from the University of North Dakota; and

**WHEREAS**, Dr. Denise K. Lajimodiere has been decreed Associate Poet Laureate by North Dakota Poet Laureate, Larry Woiwode; and

**WHEREAS**, Dr. Denise K. Lajimodiere is an enrolled member of the Turtle Mountain Band of Ojibwe, Belcourt, North Dakota, where she organized and led the Turtle Mountain Writers and Artist workshops for middle and high school students; and

**WHEREAS**, Dr. Denise K. Lajimodiere is the editor of the Turtle Mountain Teen Writers book of poetry titled "Heart of the Turtle"; and

**WHEREAS**, Dr. Denise K. Lajimodiere has published four books of poetry, "Dragonfly Dance", "His Feathers Were Chains", "Bitter Tears", and "Thunderbird"; a children's book, "Josie Dances"; and an academic book, "Stringing Rosaries: The History, The Unforgivable, and the Healing of Northern Plains American Indian Boarding School Survivors"; and

**WHEREAS**, Dr. Denise K. Lajimodiere's poetry has been published in journals, magazines, and anthologies, including "Humanities North Dakota Magazine", "Yellow Medicine Review", "Original Local", "Storytelling Time", "The Beautiful", "St. Peter's B-List", "North Dakota is Everywhere: An Anthology of Contemporary North Dakota Poets", "The Polaris Trilogy", and "Drunken Boat"; and

**WHEREAS**, Dr. Denise K. Lajimodiere's books have received the North Dakota State Library Association Notable Documents Award, Independent Book Publishers Benjamin Franklin Award, Independent Press Awards, and Midwest Book Awards, and have been nominated for the Minnesota Youth Reading Star of the North Award and the prestigious Stubbendieck Great Plains Distinguished Book Prize; and

**WHEREAS**, Dr. Denise K. Lajimodiere has been a Poetry Fellow at Vermont Studio Center in Vermont, Anderson Center and Mallard Island in Minnesota, and Soul Mountain in Connecticut; and

**WHEREAS**, Dr. Denise K. Lajimodiere is a member of the North Dakota State University Press Editorial Board; and

**WHEREAS**, Dr. Denise K. Lajimodiere's poem, "Tawkwaymenahnah", has been adopted by Carnegie Learning's language arts basal textbook for grades 6 through 12; and

**WHEREAS**, in 2021, Dr. Denise K. Lajimodiere was the invited poet with Joy Harjo, National Poet Laureate, at the National Endowment for the Arts Big Read program, a partnership between the National Endowment for the Arts and Arts Midwest, at the Plains Museum in Fargo and was the featured poet author at the South Dakota Festival of Books; and

**WHEREAS**, Dr. Denise K. Lajimodiere is considered a national expert on American Indian boarding schools and has given over 50 television, radio, and podcast interviews and has been the invited speaker at numerous conferences, including the Concordia Social Justice Advocates Conference, Guest Lecture at Verizon, National Consortium on Racial and Ethnic Fairness in the Courts, National Native American Boarding School Healing Conference, Northern Great Plains History Conference, and the Midwest Law Enforcement Administrative Support Conference;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That Dr. Denise K. Lajimodiere, a resident of Belcourt, North Dakota, is designated and shall serve as Poet Laureate of North Dakota until a successor is named; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward a copy of this resolution to Dr. Denise K. Lajimodiere.

Filed April 10, 2023

## CHAPTER 624

### SENATE CONCURRENT RESOLUTION NO. 4003

(Senators Wanzek, Conley)  
(Representatives Headland, Ostlie, Satrom, Vigesaa)

A concurrent resolution congratulating the University of Jamestown women's volleyball team for its outstanding season and for securing the university's first National Association of Intercollegiate Athletics national championship.

**WHEREAS**, on December 6, 2022, the University of Jamestown women's volleyball team captured the National Association of Intercollegiate Athletics national championship with a 3-2 victory over Corban University; and

**WHEREAS**, the 2022 University of Jamestown women's volleyball team was the champion of the Great Plains Athletic Conference regular season as well as the postseason tournament champion, finishing the season with a dominating record of 37 wins and 2 losses; and

**WHEREAS**, the leadership of Coach Jon Hegerle brought together a great group of unselfish student-athletes, including four All-Americans, and nine competitors from the great state of North Dakota;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-eighth Legislative Assembly takes great pride in extending to all members and coaches of the University of Jamestown women's volleyball team its heartiest congratulations for winning the 2022 National Association of Intercollegiate Athletics women's volleyball national championship; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward enrolled copies of this resolution to each member of the 2022 University of Jamestown women's volleyball team, to each of the team's coaches, and to the President of the University of Jamestown.

Filed March 15, 2023

## CHAPTER 625

### SENATE CONCURRENT RESOLUTION NO. 4004

(Senators Cleary, Barta, Lee)  
(Representatives Nathe, Nelson)

A concurrent resolution directing the Legislative Management to consider studying accessible transportation in the state for older adults and individuals with disabilities.

**WHEREAS**, older adults and individuals with disabilities can achieve greater freedom when those individuals have full access to a variety of transit modes; and

**WHEREAS**, expanded access allows mobility and independence in the daily lives of an older adult or an individual with disabilities, but this only can be achieved when the pathways to transit, the infrastructure, and conditions in the built environment, allow full access to transit stops, stations, and vehicles; and

**WHEREAS**, since passage of the federal Americans with Disabilities Act in 1990, many transit agencies and governmental jurisdictions throughout the nation have made significant progress in providing accessible transportation, but making additional improvements and expanding accessible transportation is imperative to achieve full access and the mobility afforded by that access;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Management consider studying accessible transportation for older adults and individuals with disabilities in the state; and

**BE IT FURTHER RESOLVED**, the study include evaluating statewide challenges to system services and barriers to expanding the state's accessible transportation infrastructure, examining the fiscal impact of providing accessible transportation, assessing the effective long-term modification of funding formulas to support accessible transportation, and evaluating modifications to anticipate the responsibilities of public entities under the federal Americans with Disabilities Act; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-ninth Legislative Assembly.

Filed March 23, 2023

## CHAPTER 626

### SENATE CONCURRENT RESOLUTION NO. 4005

(Senators Vedaa, Hogue, J. Roers)  
(Representatives Kreidt, Lefor, Nathe)

A concurrent resolution urging Congress and the Director of the United States Mint to issue commemorative silver and gold coins to commemorate Theodore Roosevelt and the opening of the Theodore Roosevelt Presidential Library.

**WHEREAS**, Theodore Roosevelt was an American statesman, conservationist, historian, and writer, who served as the 26<sup>th</sup> President of the United States; and

**WHEREAS**, before becoming President of the United States, Theodore Roosevelt ranched and hunted in the 1880s near Medora, North Dakota and is credited with saying, "I never would have been President if it had not been for my experiences in North Dakota"; and

**WHEREAS**, after becoming President, Theodore Roosevelt used his authority to protect wildlife and public lands by creating the United States Forest Service and establishing 150 national forests, 51 federal bird reserves, 4 national game preserves, 5 national parks, and 18 national monuments by enabling the 1906 American Antiquities Act; and

**WHEREAS**, the Sixty-sixth Legislative Assembly approved an endowment for a proposed Theodore Roosevelt Presidential Library and Museum in 2019; and

**WHEREAS**, the Theodore Roosevelt Presidential Library will be a museum and facility for the records of Theodore Roosevelt and will be located at a site to the west of Medora, near the Theodore Roosevelt National Park; and

**WHEREAS**, the Theodore Roosevelt Presidential Library is expected to be open to the public in 2026; and

**WHEREAS**, Theodore Roosevelt's legacy, his contributions to America's history, and the opening of the Theodore Roosevelt Presidential Library should be celebrated and commemorated;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-eighth Legislative Assembly urges Congress and the Director of the United States Mint to issue commemorative silver and gold coins to commemorate Theodore Roosevelt and the opening of the Theodore Roosevelt Presidential Library; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward a copy of this resolution to each member of the North Dakota Congressional Delegation and the Director of the United States Mint.

Filed March 9, 2023

## CHAPTER 627

### SENATE CONCURRENT RESOLUTION NO. 4008

(Senators Vedaa, Hogue, J. Roers)  
(Representatives Kreidt, Lefor, Nathe)

A concurrent resolution urging the Postmaster General of the United States Postal Service to issue a postage stamp commemorating Theodore Roosevelt and the opening of the Theodore Roosevelt Presidential Library.

**WHEREAS**, Theodore Roosevelt was an American statesman, conservationist, historian, and writer, who served as the 26<sup>th</sup> President of the United States; and

**WHEREAS**, before becoming President of the United States, Theodore Roosevelt ranched and hunted in the 1880s near Medora, North Dakota and is credited with saying, "I never would have been President if it had not been for my experiences in North Dakota"; and

**WHEREAS**, after becoming President, Theodore Roosevelt used his authority to protect wildlife and public lands by creating the United States Forest Service and establishing 150 national forests, 51 federal bird reserves, 4 national game preserves, 5 national parks, and 18 national monuments by enabling the 1906 American Antiquities Act; and

**WHEREAS**, the Sixty-sixth Legislative Assembly approved an endowment for a proposed Theodore Roosevelt Presidential Library and Museum in 2019; and

**WHEREAS**, the Theodore Roosevelt Presidential Library will be a museum and facility for the records of Theodore Roosevelt and will be located at a site to the west of Medora, near the Theodore Roosevelt National Park; and

**WHEREAS**, the Theodore Roosevelt Presidential Library is expected to be open to the public in 2026; and

**WHEREAS**, Theodore Roosevelt's legacy, his contributions to America's history, and the opening of the Theodore Roosevelt Presidential Library should be celebrated and commemorated;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-eighth Legislative Assembly urges the Postmaster General of the United States Postal Service to issue a postage stamp commemorating Theodore Roosevelt and the opening of the Theodore Roosevelt Presidential Library; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward a copy of this resolution to the Postmaster General of the United States Postal Service and each member of the North Dakota Congressional Delegation.

Filed March 15, 2023

## CHAPTER 628

### SENATE CONCURRENT RESOLUTION NO. 4009

(Senators Mathern, Hogan)  
(Representatives Conmy, Dobervich, Karls, Weisz)

A concurrent resolution directing the Legislative Management to consider studying whether health insurance should provide coverage for diagnostic and supplemental breast examinations without imposing cost-sharing requirements.

**WHEREAS**, cost-sharing requirements mean deductible, coinsurance, copayment, and any maximum limitations on the application of the deductible, coinsurance, copayment, or similar out-of-pocket expenses; and

**WHEREAS**, diagnostic breast examinations are medically necessary and clinically appropriate examinations of the breast, including examinations using diagnostic mammography, breast magnetic resonance imaging, or breast ultrasound, which are used to evaluate an abnormality seen or suspected from a screening examination for breast cancer, or used to evaluate an abnormality detected by another means of examination; and

**WHEREAS**, supplemental breast examinations are medically necessary and appropriate examinations of the breast, including examinations using breast magnetic resonance imaging or breast ultrasound, which are used to screen for breast cancer when there is no abnormality seen or suspected, and based on personal or family medical history or on additional factors that may increase the individual's risk of breast cancer; and

**WHEREAS**, diagnostic and supplemental imaging are essential tools in the screening and diagnosis of breast cancer; and

**WHEREAS**, approximately 12 to 16 percent of patients undergoing a screening mammogram are referred by their radiologist for diagnostic testing; and

**WHEREAS**, screening mammograms are cost-free under the federal Affordable Care Act, cost-sharing requirements apply to diagnostic and supplemental imaging procedures under private insurance plans, ranging in cost from the hundreds to the thousands of dollars per procedure; and

**WHEREAS**, cost is a contributing factor in why patients skip diagnostic testing and do not follow up after their initial screening mammogram; and

**WHEREAS**, the current coverage disparity is most evident by income level and race, with lower and middle-income patients, insured but unable to pay higher costs for additional testing, often forgoing testing and potential treatment until cancer has progressed to a more advanced stage; and

**WHEREAS**, early detection of breast cancer leads to the greatest chance of survivability;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH**

**DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Management consider studying whether health insurance should provide coverage for diagnostic and supplemental breast examinations without imposing cost-sharing requirements; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-ninth Legislative Assembly.

Filed March 27, 2023

## CHAPTER 629

### SENATE CONCURRENT RESOLUTION NO. 4011

(Senators Lee, Hogan)  
(Representatives Mitskog, M. Ruby, Weisz)

A concurrent resolution directing the Legislative Management to consider studying the program of all-inclusive care for the elderly and the benefits of expanding the program.

**WHEREAS**, the program of all-inclusive care for the elderly provides a full-service delivery system including patient-centered and coordinated care to frail and elderly individuals; and

**WHEREAS**, these services include preventive, primary, short-term, and long-term care while allowing most individuals to continue living at home; and

**WHEREAS**, the program provides services for Medicare and Medicaid-eligible enrollees including physical and occupational therapy, nutritional counseling, social services, and meals to individuals, which are provided mainly in a program center but also are provided in home as needed; and

**WHEREAS**, approximately 121 individuals residing in the Fargo area are eligible and this number is projected to grow to 143 in 2027; and approximately 102 individuals residing in the Grand Forks area are eligible and this number is projected to grow to 118 in 2027; and

**WHEREAS**, North Dakota has among the lowest income eligibility for the program; and

**WHEREAS**, 24 of 32 states set income eligibility at 300 percent of social security income; and

**WHEREAS**, if North Dakota increased its income eligibility to 300 percent of social security income, eligibility numbers would increase dramatically to a projected 383 individuals in the Fargo area in 2027, and 276 individuals in the Grand Forks area in 2027; and

**WHEREAS**, the program of all-inclusive care for the elderly will require increased enrollment and market penetration to become financially self-sustaining;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Management consider studying the program of all-inclusive care for the elderly and the benefits of expanding the program; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-ninth Legislative Assembly.

Filed March 27, 2023

## CHAPTER 630

### SENATE CONCURRENT RESOLUTION NO. 4014

(Senators Bekkedahl, Elkin, Kessel, Patten)  
(Representatives Kempenich, Steiner)

A concurrent resolution urging the Secretary of the Interior and the Director of the National Park Service to modify its proposed livestock management plan, to recognize the benefits of livestock grazing, and to continue to allow for interpretative, cultural, and historical purposes a herd of longhorn steers in the North Unit of the Theodore Roosevelt National Park and the presence of a wild horse herd in the South Unit of the Theodore Roosevelt National Park.

**WHEREAS**, Theodore Roosevelt was an American statesman, conservationist, historian, and writer, who served as the twenty-sixth President of the United States; and

**WHEREAS**, before becoming President of the United States, Theodore Roosevelt ranched and hunted in the 1880s near Medora, North Dakota, and is credited with saying, "I never would have been President if it had not been for my experiences in North Dakota"; and

**WHEREAS**, Theodore Roosevelt's legacy was commemorated with the establishment of the South Unit of the Theodore Roosevelt National Memorial Park in 1947, and the North Unit in 1948; and

**WHEREAS**, in 1978, the areas were given national park status and renamed as the Theodore Roosevelt National Park, which is the only national park named directly for a single person; and

**WHEREAS**, longhorns and wild horse herds, present in the era of Theodore Roosevelt, have been an integral part of the recent history of Theodore Roosevelt National Park and should therefore be preserved in some form for the benefit of the public narrative; and

**WHEREAS**, livestock grazing is beneficial to Theodore Roosevelt National Park as an effective tool to manage a variety of forage, spur growth of perennial grasses, decrease invasive species, increase organic matter, suppress wildfires, and support biodiversity and more resilient landscapes;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-eighth Legislative Assembly urges the National Park Service to preserve the longhorn steers and wild horses residing within Theodore Roosevelt National Park and the United States Congress to assist with preserving the historic herds; and

**BE IT FURTHER RESOLVED**, the Secretary of State forward copies of this resolution to the United States Secretary of the Interior, the Director of the National Park Service, and each member of the North Dakota Congressional Delegation.

Filed April 17, 2023

## CHAPTER 631

### SENATE CONCURRENT RESOLUTION NO. 4015

(Senators Hogan, Cleary)

A concurrent resolution recognizing the 25<sup>th</sup> anniversary of the ratification of the Good Friday Agreement that provided the framework for lasting peace in Northern Ireland and celebrating the flag of Ireland as a symbol of peace and a link between the United States and Ireland.

**WHEREAS**, 2023 marks the 25<sup>th</sup> anniversary of the ratification of the Good Friday Agreement reached on April 10, 1998; and

**WHEREAS**, while there are some outstanding issues, the Good Friday Agreement has been a considerable success which saved lives as a result of the continuous bipartisan support for the Good Friday Agreement by state legislators, successive United States Presidents, the United States Senate, United States House of Representatives, and elected officials working in partnership with the Government of the United Kingdom and the Government of Ireland; and

**WHEREAS**, the Good Friday Agreement represented a landmark breakthrough that provided Ireland with a political framework to address its future; and

**WHEREAS**, the Good Friday Agreement acknowledged the right of individuals with differing political traditions to pursue their goals of remaining part of the United Kingdom or of the Irish Unity; and

**WHEREAS**, the Good Friday Agreement demonstrated democratic and peaceful means of resolving differences; and

**WHEREAS**, the British and Irish Governments' ongoing support and implementation of the Good Friday Agreement is commendable, regardless of the United Kingdom's status regarding the European Union; and

**WHEREAS**, despite the historic progress that resulted from the Good Friday Agreement and subsequent agreements, important issues remain unresolved in Northern Ireland, including securing justice for victims of state-sponsored violence and other violence and providing for the rights of all sections of the community; and

**WHEREAS**, members of both political parties in the United States came together to support the Good Friday Agreement; and

**WHEREAS**, on the 17<sup>th</sup> of March during the annual celebration of the feast of Saint Patrick, the patron saint of Ireland, Irish Americans join with men, women, and children of all ethnic origins for one day becoming Irish and celebrating Saint Patrick and this year we also celebrate and give thanks for the 25<sup>th</sup> anniversary of the Good Friday Agreement; and

**WHEREAS**, 2023 also marks the 175<sup>th</sup> anniversary of the first flying of the Irish flag by Thomas F. Meagher who embodied the links between Ireland and the United States of America; and

**WHEREAS**, Thomas F. Meagher ran for election to the City Council in Waterford, Ireland, led the rebellion for freedom from British rule in Ireland in 1848, was sentenced to death, which was commuted to transportation for life in prison in Australia, from where he escaped, became a brigadier general in the 69<sup>th</sup> Regiment of the famous 'Fighting Irish Brigade' and fought in some of the bloodiest battles of the American Civil War, including Fredericksburg and Antietam, became a friend of President Abraham Lincoln, and went on to become the acting territorial governor of Montana, dying under mysterious circumstances at the age of 43;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-eighth Legislative Assembly recognizes the 25<sup>th</sup> anniversary of the ratification of the Good Friday Agreement that provided the framework for lasting peace in Northern Ireland and celebrates the flag of Ireland as a symbol of peace and a link between the United States and Ireland; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to each member of the North Dakota Congressional Delegation; Senator Mark Daly, Chair of the Senate of Ireland; and to the National co-chairs of the American Irish State Legislators Caucus: Assemblywoman Carol Murphy, New Jersey; Assemblyman Robin Vos, Wisconsin; Senator Shannon O'Brien, Montana; Representative Brian Patrick Kennedy, Rhode Island; Assemblyman James Gallagher, California; Representative Fran Hurley, Illinois; and Representative Killian Timoney, Kentucky.

Filed March 22, 2023

## CHAPTER 632

### SENATE CONCURRENT RESOLUTION NO. 4016

(Senators Magrum, Weston)  
(Representatives Hoverson, S. Olson)

A concurrent resolution directing the Legislative Management to consider studying the availability of adequately accessible housing in the state for individuals with mobility impairments or physical disabilities.

**WHEREAS**, the Americans with Disabilities Act aimed to secure equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities; and

**WHEREAS**, the availability of accessible housing plays a key role in furthering the goal of the Americans with Disabilities Act, which has become increasingly important as the nation's population ages; and

**WHEREAS**, the majority of homes are not fully accessible, with less than 5 percent of homes having the features needed to accommodate an individual with moderate mobility difficulties, and an even smaller percentage meeting the requirements for wheelchair accessibility; and

**WHEREAS**, the existing inventory of homes is not well equipped to accommodate people with disabilities; and

**WHEREAS**, the need for accessible housing likely will become more acute as the number of older Americans who have both ambulatory limitations and a desire to age-in-place grows;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Management consider studying the availability of adequately accessible housing in the state for individuals with mobility impairments or physical disabilities; and

**BE IT FURTHER RESOLVED**, the study include evaluating statewide challenges and barriers to expanding the state's inventory of accessible housing, assessing the need for and availability of accessible housing for individuals with mobility impairments or physical disabilities, and evaluating the effective, long-term home modifications that could support and increase the availability of accessible homes; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-ninth Legislative Assembly.

Filed March 15, 2023

## CHAPTER 633

### SENATE CONCURRENT RESOLUTION NO. 4017

(Senators Kessel, Luick, Wanzek, Weber)

(Representative Thomas)

(Approved by the Delayed Bills Committee)

A concurrent resolution urging the Administrator of the United States Environmental Protection Agency to fully reinstate, and strictly abide by the October 17, 2017, memorandum titled *Adhering to the Fundamental Principles of Due Process, Rule of Law, and Cooperative Federalism in Consent Decrees and Settlement Agreements*; to promulgate and enforce only environmental regulations that appropriately take into account public and private fiscal impacts as well as the nation's continuing food security and energy security; and to defer to and work together in good faith with all sovereign states in the spirit of cooperative federalism.

**WHEREAS**, on October 16, 2017, United States Environmental Protection Agency Administrator E. Scott Pruitt issued the ethical memorandum entitled *Adhering to the Fundamental Principles of Due Process, Rule of Law, and Cooperative Federalism in Consent Decrees and Settlement Agreements* that rightly banned the United States Environmental Protection Agency from deigning to regulate through litigation by means of engaging in "sue and settle" litigation practices or participating in "friendly lawsuits"; and

**WHEREAS**, less than five years later, on March 18, 2022, United States Environmental Protection Agency Administrator Michael S. Regan subsequently formally and brazenly revoked the United States Environmental Protection Agency's standing, highly principled memorandum; and

**WHEREAS**, upon the revocation of the memorandum, the United States Environmental Protection Agency consequently has returned to resolving litigation through consent decrees and settlement agreements that readily appear to be the result of collusion with outside groups; and

**WHEREAS**, the United States Environmental Protection Agency's consequent return to regulation through litigation violates due process, the rule of law, and cooperative federalism, and subsequently causes sovereign states and persons substantial economic uncertainty, legal uncertainty, liability uncertainty, and regulatory uncertainty; and

**WHEREAS**, the United States Environmental Protection Agency's consequent overwhelming cascade of new and proposed costly and unnecessary regulations burdening the state's agriculture economy is unprecedented, crushing the ability of the state's producers to produce safe and affordable food, feed, fuel, and fiber reliably and efficiently for the nation; and

**WHEREAS**, the United States Environmental Protection Agency's consequent unbridled approach of issuing and enforcing unbalanced and unwarranted regulations is unduly stifling the state's economy by erecting needless barriers to critical energy

development and production, consequently adversely affecting the nation's energy security; and

**WHEREAS**, the United States Environmental Protection Agency's consequent overbearing regulatory burdens are far too costly and onerous relative to the supposed environmental protection benefits provided; and

**WHEREAS**, the United States Environmental Protection Agency shall consistently base each of its regulatory decisions on a foundation of sound empirical science and good governance, and not condescend to engage in unethical agency practices to align with or placate environmental activist alarmism or other agenda-driven political or ideological pressure; and

**WHEREAS**, individual sovereign states and local communities steadfastly remain best positioned and retain primary responsibility to regulate and provide balanced and effective environmental oversight in achieving and maintaining clean air, clear water, and healthy soils within their respective jurisdictions;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Sixty-eighth Legislative Assembly urges the Administrator of the United States Environmental Protection Agency to fully reinstate, and strictly abide by the October 17, 2017, memorandum titled *Adhering to the Fundamental Principles of Due Process, Rule of Law, and Cooperative Federalism in Consent Decrees and Settlement Agreements*; to promulgate and enforce only environmental regulations that appropriately take into account public and private fiscal impacts as well as the nation's continuing food security and energy security; and to defer to and work together in good faith with all sovereign states in the spirit of cooperative federalism; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution via certified mail with return receipt requested to the Administrator of the United States Environmental Protection Agency, the United States Secretary of Agriculture, the United States Secretary of Energy, the United States Secretary of the Interior, the Director of the United States Fish and Wildlife Service, the Commanding General of the United States Army Corps of Engineers, and each member of the North Dakota Congressional Delegation.

Filed April 11, 2023

# HOUSE MEMORIAL RESOLUTIONS

## CHAPTER 634

### 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:

Lynn William Aas, who served in the 40<sup>th</sup>, 41<sup>st</sup>, 50<sup>th</sup>, and 51<sup>st</sup> Legislative Assemblies, from District 5, died October 28, 2021;

James Edward Froeber, who served in the 43<sup>rd</sup> Legislative Assembly, from District 5, died January 23, 2022;

Stephen Thomas "Bud" Gorman, Jr., who served in the 50<sup>th</sup> through the 54<sup>th</sup> Legislative Assemblies, from District 46, died October 29, 2021;

Jayson Leroy Graba, who served in the 49<sup>th</sup> through the 51<sup>st</sup> Legislative Assemblies, from District 43, died October 9, 2022;

George Joseph Keiser, who served in the 53<sup>rd</sup> through the 67<sup>th</sup> Legislative Assemblies, from District 47, died December 22, 2021;

Matthew M. Klein, who served in the 53<sup>rd</sup> through the 64<sup>th</sup> Legislative Assemblies, from District 40, died January 30, 2023;

Richard F. "Dick" Larsen, who served in the 39<sup>th</sup> Legislative Assembly, from District 7, died August 27, 2022;

Ellis Gene Martin, who served in the 45<sup>th</sup> Legislative Assembly, from District 43, and in the 48<sup>th</sup> Legislative Assembly, from District 17-18, died September 22, 2022;

Stuart J. McDonald, who served in the 40<sup>th</sup> and 41<sup>st</sup> Legislative Assemblies, from District 18, died October 2, 2021;

Marshall W. Moore, who served in the 47<sup>th</sup> through the 50<sup>th</sup> Legislative Assemblies, from District 44, died March 12, 2022;

Marvin Orlen "Marv" Mutzenberger, who served in the 52<sup>nd</sup> through the 54<sup>th</sup> Legislative Assemblies, from District 32, died July 19, 2021;

Donna Lou Speer Nalewaja, who served in the 48<sup>th</sup> and 49<sup>th</sup> Legislative Assemblies, from District 45, died September 30, 2021;

Carol Ann Oline Niemeier, who served in the 55<sup>th</sup> through the 58<sup>th</sup> Legislative Assemblies, from District 20, died December 14, 2021;

Duane Rau, who served in the 43<sup>rd</sup> through the 45<sup>th</sup> Legislative Assemblies, from District 29, died March 8, 2022;

Arlo E. Schmidt, who served in the 54<sup>th</sup> through the 56<sup>th</sup> Legislative Assemblies, from District 12, and in the 57<sup>th</sup> through the 61<sup>st</sup> Legislative Assemblies, from District 7, died November 30, 2022;

Calvin A. "Kelly" Shockman, who served in the 48<sup>th</sup> through the 51<sup>st</sup> Legislative Assemblies, from District 28, died December 11, 2021;

William Horton "Bill" Starke, who served in the 49<sup>th</sup> through the 52<sup>nd</sup> Legislative Assemblies, from District 12, died May 19, 2022;

Wayne K. Stenehjerm, who served in the 45<sup>th</sup> and 46<sup>th</sup> Legislative Assemblies, from District 42, died January 28, 2022;

Earl S. Strinden, who served in the 40<sup>th</sup> through the 47<sup>th</sup> Legislative Assemblies, from District 18, and in the 48<sup>th</sup> through the 50<sup>th</sup> Legislative Assemblies, from District 17-18, died October 18, 2022;

Gerald Orlando Sveen, who served in the 53<sup>rd</sup> through the 56<sup>th</sup> Legislative Assemblies, from District 6, died September 23, 2021;

Elwood Clifton "Woody" Thorpe, who served in the 52<sup>nd</sup> and 53<sup>rd</sup> and in the 55<sup>th</sup> through the 61<sup>st</sup> Legislative Assemblies, from District 5, died March 29, 2021;

Benjamin C. "Ben" Tollefson, who served in the 49<sup>th</sup> through the 52<sup>nd</sup> Legislative Assemblies, from District 40-50, and in the 53<sup>rd</sup> through the 56<sup>th</sup> Legislative Assemblies, from District 38, died December 16, 2021;

Francis E. "Hank" Weber, who served in the 38<sup>th</sup> Legislative Assembly, from District 11, and in the 40<sup>th</sup> through the 46<sup>th</sup> Legislative Assemblies, from District 22, died October 27, 2022;

Alon Carl Wieland, who served in the 58<sup>th</sup> through the 63<sup>rd</sup> Legislative Assemblies, from District 13, died January 22, 2022;

Joseph Richard Whalen, who served in the 47<sup>th</sup> through the 52<sup>nd</sup> Legislative Assemblies, from District 39, died May 25, 2021;

Gerry Lynn Wilkie, who served in the 50<sup>th</sup> through the 55<sup>th</sup> Legislative Assemblies, from District 9, died July 18, 2021; and

**WHEREAS**, we now pause to mourn the passing of our former House of Representatives 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 March 16, 2023



# SENATE MEMORIAL RESOLUTIONS

## CHAPTER 635

### SENATE MEMORIAL RESOLUTION NO. 8001

(Memorial Resolutions Committee)

A memorial resolution for deceased members of the Senate of North Dakota.

**WHEREAS**, God has welcomed to their eternal home our former colleagues:

Jayson Leroy Graba, who served in the 52<sup>nd</sup> and 53<sup>rd</sup> Legislative Assemblies, from District 43, died October 9, 2022;

James O. "Jim" Kusler, who served in the 48<sup>th</sup> and 49<sup>th</sup> Legislative Assemblies, from District 33, died November 7, 2021;

Richard F. "Dick" Larsen, who served in the 40<sup>th</sup> Legislative Assembly, from District 18, died August 27, 2022;

Marvin Orlen "Marv" Mutzenberger, who served in the 55<sup>th</sup> and 56<sup>th</sup> Legislative Assemblies, from District 32, died July 19, 2021;

Donna Lou Speer Nalewaja, who served in the 50<sup>th</sup> through the 55<sup>th</sup> Legislative Assemblies, from District 45, died September 30, 2021;

James George Smykowski, who served in the 43<sup>rd</sup> through the 46<sup>th</sup> Legislative Assemblies, from District 26, died December 9, 2021;

Wayne K. Stenehjem, who served in the 47<sup>th</sup> through the 56<sup>th</sup> Legislative Assemblies, from District 42, died January 28, 2022;

Harvey Dean Tallackson, who served in the 45<sup>th</sup> through the 60<sup>th</sup> Legislative Assemblies, from District 16, died July 27, 2022;

Benjamin C. "Ben" Tollefson, who served in the 57<sup>th</sup> through the 60<sup>th</sup> Legislative Assemblies, from District 38, died December 16, 2021;

John Thomas "Jack" Traynor, who served in the 52<sup>nd</sup> through the 59<sup>th</sup> Legislative Assemblies, from District 15, died July 11, 2021;

Francis E. "Hank" Weber, who served in the 39<sup>th</sup> Legislative Assembly, from District 11, died October 27, 2022;

Stanley "Stan" Wright, who served in the 43<sup>rd</sup> through the 50<sup>th</sup> Legislative Assemblies, from District 4, died December 11, 2021; 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 16, 2023

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2036.....	61-16.1-09.1.....	Amend.....	569
2036.....	61-16.1-15.....	Amend.....	569
2036.....	61-16.1-16.1.....	Create.....	569
2036.....	61-16.1-17.....	Amend.....	569
2036.....	61-16.1-18.....	Amend.....	569
2036.....	61-16.1-19.....	Amend.....	569
2036.....	61-16.1-20.....	Amend.....	569
2036.....	61-16.1-21.....	Amend.....	569
2036.....	61-16.1-22.....	Amend.....	569
2036.....	61-16.1-23.....	Amend.....	569
2036.....	61-16.1-23.1.....	Create.....	569
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2036	61-16.1-34.2	Create	569
2036	61-16.1-42	Amend	569
2036	61-16.1-43	Amend	569
2036	61-16.1-43.1	Create	569
2036	61-16.1-49.1	Create	569
2036	61-16.1-50.1	Create	569
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2036	61-16.1-59.2	Create	569
2036	61-21	Repeal	569
2036	61-32-03.1 (4) (g)	Amend	569
2038	65-02-30	Repeal	583
2039	54-57-09	Amend	585
2039	65-01-19	Repeal	585
2039	65-03-05	Repeal	585
2039	65-05.1-06.3	Amend	585
2040	54-35-22	Repeal	584
2040	65-02-30	Amend	584
2041	32-03-58	Repeal	316
2041	32-49	Create	316
2041	32-49-01	Create	316
2041	32-49-02	Create	316
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2041	32-49-05	Create	316
2041	32-49-06	Create	316
2041	32-49-07	Create	316
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2042	54-44.4-02	Amend	512
2042	54-44.4-05	Amend	512
2042	54-44.4-05.1	Create	512
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2043	29-29.1-02 (1)	Amend	306
2043	29-29.1-03 (1)	Amend	306
2043	29-29.1-04	Amend	306
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2045	27-02.1-02	Amend	290
2045	27-02.1-03	Amend	290
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2045	27-02.1-05	Amend	290
2045	27-02.1-06	Amend	290
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2048.....	54-66-06.....	Amend.....	525
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2049.....	15-08-19.1.....	Amend.....	149
2049.....	15-08-19.4.....	Amend.....	149
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2050.....	54-24-09.....	Amend.....	477
2050.....	54-24.2-02.2.....	Repeal.....	477
2050.....	54-24.2-02.3.....	Create.....	477
2050.....	54-24.2-03.....	Amend.....	477
2050.....	54-24.4-05.....	Amend.....	477
2051.....	12-60-24 (2) (f).....	Amend.....	274
2051.....	25-03.2-03.....	Amend.....	274
2051.....	25-03.2-04.....	Amend.....	274
2051.....	25-03.2-04.1.....	Create.....	274
2051.....	50-06-01.9.....	Amend.....	274
2051.....	50-06-01.10.....	Create.....	274
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2052.....	25-01-03.....	Amend.....	271
2052.....	25-04-00.1.....	Amend.....	271
2052.....	25-04-01.....	Amend.....	271
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2053	39-03-05	Amend	70
2053	39-03-06	Amend	70
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2053	39-03.1-02	Amend	70
2053	39-03.1-10.4	Amend	70
2053	39-03.1-27	Amend	70
2053	39-07-12	Amend	70
2053	39-07-13	Amend	70
2053	54-52-17.2 (1) (a) (2)	Amend	70
2053	54-52.1-03 (2)	Amend	70
2053	54-52.1-03.2 (1) (b)	Amend	70
2053	54-52.1-03.3 (1) (a)	Amend	70
2053	54-52.1-03.3 (2)	Amend	70
2054	39-03-09	Amend	475
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2055	26.1-26-13.5	Create	282
2055	26.1-26-30	Amend	282
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2055	26.1-26.8-09 (2) (a)	Amend	282
2055	26.1-33.4-02 (7)	Amend	282
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2056	26.1-03-11	Amend	277
2056	26.1-36.4-06	Amend	277
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2059	57-51-15 (1) (b)	Amend	556
2060	10-04-06 (17)	Amend	101
2060	10-04-07.2 (7)	Create	101
2060	10-04-08.4 (5)	Amend	101
2060	10-04-10	Amend	101
2060	10-04-10.1	Amend	101
2060	10-04-10.3	Amend	101
2060	10-04-16 (1)	Amend	101
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2065.....	43-49-04.....	Amend.....	392
2065.....	43-49-04.1.....	Create.....	392
2065.....	43-49-05.....	Amend.....	392
2065.....	43-49-06.....	Amend.....	392
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2065.....	43-49-09.....	Amend.....	392
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2067.....	12.1-34-07.....	Amend.....	135
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2070.....	15.1-18-10.....	Amend.....	182
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2083.....	50-06-05.2.....	Amend.....	272
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2090.....	13-04.1-03.....	Amend.....	138
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2090.....	13-04.1-09.....	Amend.....	138
2090.....	13-04.1-09.3.....	Amend.....	138
2090.....	13-04.1-10.....	Amend.....	138
2090.....	13-04.1-13.....	Amend.....	138
2090.....	13-04.1-14.....	Amend.....	138
2090.....	13-04.1-16.....	Repeal.....	138
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2090.....	13-12-01.....	Create.....	138
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2090.....	13-12-04.....	Create.....	138
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2096	4.1-18.1-07.1	Create	80
2096	4.1-18.1-09	Create	80
2096	4.1-18.1-10	Create	80
2096	4.1-18.1-11	Create	80
2096	4.1-18.1-12	Create	80
2096	4.1-18.1-13	Create	80
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2096	4.1-59-09	Amend	80
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2097	61-15-11	Create	568
2098	43-17.3-01	Amend	385
2098	43-17.3-02	Amend	385
2098	43-17.3-03	Amend	385
2098	43-17.3-04	Amend	385
2098	43-17.3-05 (1)	Amend	385
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2103	50-25.1-02	Amend	445
2103	50-25.1-05 (5)	Amend	445
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2103	50-25.1-20	Amend	445
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2104	50-11.1-07	Amend	435
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2108.....	55-08-06 (3).....	Amend.....	526
2108.....	55-08-06 (4).....	Amend.....	526
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