

HEALTH AND SAFETY

CHAPTER 257

HOUSE BILL NO. 1112
(Committee on Human Services and Veterans Affairs)
(At the request of the State Department of Health
and Consolidated Laboratories)

HEALTH COUNCIL MEMBERS

AN ACT to amend and reenact section 23-01-02 of the North Dakota Century Code, relating to health council membership.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 23-01-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-01-02. Health council - Members, terms of office, vacancies, compensation, officers, meetings. The health council consists of fifteen seventeen members appointed by the governor in the following manner: Two persons shall be appointed from a list of four submitted by the state hospital association, two persons shall be appointed one of whom must represent a rural hospital and one of whom must represent an urban hospital, one person from a list of four two submitted by the state medical association, one person from a list of two submitted by the state long term care association, one person shall be appointed from a list of two submitted by the state dental association, one person shall be appointed from a list of two submitted by the state optometric association, one person shall be appointed from a list of two submitted by the state nurses association, one person shall be appointed from a list of two submitted by the state pharmaceutical association, and there shall be appointed seven nine persons who are consumers of health care services and not employed in the health care field to the health council. One health care consumer member must be a representative of the business community, one health care consumer member must be a representative of the agriculture community, one health care consumer member must be a representative of organized labor, and one health care consumer member must be a representative of elderly citizens. For the purposes of this section, a rural hospital is a hospital located in a city with a population of less than twenty thousand, and an urban hospital is a hospital located in a city with a population of twenty thousand or more. 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 shall must be elected annually. The following persons shall Any state agency may serve in an advisory capacity to the health council: the state health officer, the attorney general, the director of institutions, the state fire marshal, the executive secretary of the state board of nursing, the executive director of the department of human services, the executive director of the North Dakota Indian affairs commission, and any other persons the governor may designate 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

* NOTE: Section 23-01-02 was also amended by section 4 of Senate Bill No. 2245, chapter 592.

standing committees a health committee and a hospital committee and any other committees the council may find necessary. The health committee consists of one of the representatives of the state medical association; one of the representatives of the state hospital association; the representative of the state dental association; the representative of the state optometric association; the representative of the state nurses association; and two of the health care consumer members. The hospital committee consists of the representatives of the state hospital association; one of the representatives of the state medical association; the representative of the state nurses association; and two of the health care consumer members. The members of these committees shall must be selected by the chairman of the health council from its own membership. The chairman shall have the responsibility of assigning to the special committees problems relating to the respective fields. The members of the council are entitled to receive the same compensation per day as provided in section 54-35-10 for members of the legislative council and their necessary mileage and travel expenses as provided in sections 54-06-09 and 44-08-04 while attending council meetings, or in the performance of such special duties as the council may direct. The per diem and expenses shall 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.

Approved April 8, 1991
Filed April 8, 1991

CHAPTER 258

HOUSE BILL NO. 1312
(Representatives D. Olsen, Jensen, Scherber)
(Senators Nalewaja, Krebsbach)

VACCINE CHARGES BY HEALTH DEPARTMENT

AN ACT to amend and reenact section 23-01-04.2 of the North Dakota Century Code, relating to the regulation of vaccine charges by the department of health and consolidated laboratories.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01-04.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-01-04.2. Legislative intent - Health vaccination charges. It is the intent of the legislative assembly that the department of health and consolidated laboratories adopt rules ~~limiting the charges by private clinics and hospitals for providing vaccinations, with vaccine obtained at no cost from the department, to one half of the cost incurred by the department in purchasing the vaccine~~ defining appropriate administration charges for vaccine provided by the department to physicians, private clinics, and hospitals.

Approved March 7, 1991
Filed March 7, 1991

CHAPTER 259

HOUSE BILL NO. 1590
(Representatives Thompson, Laughlin)
(Senators Mushik, Traynor)

ALTERNATIVE HEALTH CARE PROJECTS

AN ACT relating to the establishment of alternative health care services pilot projects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Alternative health care services pilot project - Application. 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 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.

SECTION 2. Notice - Hearing. Upon receipt of an application under section 1 of this Act, the state health council 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 shall accept written and oral testimony. The council 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. The criteria must address the availability and use of health personnel, facilities, and services.

SECTION 3. Approval of pilot project - Duration. Notwithstanding any other provisions of law, upon approval of an application submitted under section 1 of this Act, the state health council, in consultation with the state health officer and any other public or private entity consulted by the state health council, 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 4. Report to the fifty-third legislative assembly. The state health council shall monitor all ongoing alternative health care services pilot projects to assess the need for statutory and regulatory changes and shall report its findings to the fifty-third legislative assembly.

Approved April 2, 1991
Filed April 4, 1991

CHAPTER 260

HOUSE BILL NO. 1499
(Representatives Mutzenberger, D. Olsen, Kolbo)
(Senators Lips, Mathern)

TRANSPLANT TRUST FUND

AN ACT to provide for an organ or tissue transplant trust fund to be administered by a private nonprofit organization for the purpose of providing financial assistance to transplant patients; to amend and reenact subsection 1 of section 57-38-35.1 of the North Dakota Century Code, relating to disposition of certain revenues not refunded to income taxpayers; to provide a standing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Organ or tissue transplant assistance administration - Standing appropriation. The state health officer 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 state health officer 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 2. AMENDMENT. Subsection 1 of section 57-38-35.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. No refunds may be made by the tax commissioner to any taxpayer unless the amount to be refunded, including interest, is at least five dollars. Notwithstanding the provisions of section 57-38-55, the tax commissioner shall transfer any amount that is not refunded to a taxpayer under this subsection to the state treasurer for deposit in the organ transplant support fund.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1990.

Approved April 2, 1991
Filed April 4, 1991

CHAPTER 261

HOUSE BILL NO. 1129
(Committee on Human Services and Veterans Affairs)
(At the request of the State Department of Health and
Consolidated Laboratories)

FEDERAL FUND QUALIFICATION COMPLIANCE RULES

AN ACT to amend and reenact section 23-01-11 of the North Dakota Century Code, relating to acceptance of funds by the department of health and consolidated laboratories and authorization to qualify for benefits under federal laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

23-01-11. Acceptance of funds and right to qualify for benefits under federal laws authorized. The state department of health and consolidated laboratories may:

1. Accept funds from cities, counties, the federal government, private organizations, and individuals for infancy and maternal hygiene, for other public health work and for the purpose of conducting a survey of existing medical hospitals and related institutions, planning of needed hospital construction and for construction and maintenance of such medical hospitals and related institutions. When approved by the governor of this state, the state department of health and consolidated laboratories may match the same from any unexpended portion of its appropriation in accordance with specifications agreed to or required by congressional act. All infancy and maternal hygiene and public health work ~~shall~~ must be done under the supervision of the state department of health and consolidated laboratories.
2. Do any and all things that may be Adopt rules necessary in order to enable the state of North Dakota to receive the full benefit of be in compliance with any federal laws now in force for the construction, equipping and maintenance of in order to qualify for any federal funds related to medical hospitals and related institutions facilities or agencies licensed by the state department of health and consolidated laboratories.

Approved March 8, 1991
Filed March 8, 1991

CHAPTER 262

SENATE BILL NO. 2589
(Senators Mushik, Ingstad)
(Representatives Dorso, Stofferahn)
(Approved by the Committee on Delayed Bills)

PHYSICIAN FEE INFORMATION

AN ACT to create and enact a new section to chapter 23-01.1 and a new subsection to section 23-01.1-02 of the North Dakota Century Code, relating to publication of physicians' fee information; to amend and reenact section 23-01.1-04 of the North Dakota Century Code, relating to data acquired by the health care data committee; and to repeal section 23-01.1-03 of the North Dakota Century Code, relating to a directory of licensed physicians.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-01.1 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Publication of comparative physician fee information. The health care data committee shall create a data collection, retention, processing, and reporting system that will allow the distribution of information comparing the average fees charged by each licensed physician practicing medicine in this state. Insurers, nonprofit health service corporations, health maintenance organizations, and state agencies shall provide the data and information. The committee shall prepare a report which must include a schedule of average fees charged for services representative of the physician's type of practice and specialization and other information that the data committee may determine are necessary for consumers to use in comparing total physician costs and to assist policymakers or providers in their deliberations on future health care decisions.

SECTION 2. A new subsection to section 23-01.1-02 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Prepare and distribute a report comparing physicians' average charges for selected services to include all physicians licensed to practice medicine in this state and determined by the health care data committee to be actively providing direct patient care services in this state.

SECTION 3. AMENDMENT. Section 23-01.1-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-01.1-04. Administrative authority of health care data committee - Administrative support - Authority to acquire data. The health care data committee may adopt rules consistent with and necessary for the implementation of this chapter. The committee shall establish working

arrangements among other state agencies for the assurance of patient confidentiality, the sharing of information, and the coordination, analysis, and dissemination of health care data to the public and to the state agencies in making more cost-effective health care purchasing decisions. The committee may require insurers, nonprofit health service corporations, health maintenance organizations, and state agencies to provide data regarding hospital, physician, and other provider charges, and reimbursement and volume data as required for the performance of the duties of the committee under this chapter.

SECTION 4. REPEAL. Section 23-01.1-03 of the 1989 Supplement to the North Dakota Century Code is repealed.

Approved April 5, 1991
Filed April 8, 1991

CHAPTER 263

HOUSE BILL NO. 1197
(Committee on Human Services and Veterans Affairs)
(At the request of the State Department of Health and
Consolidated Laboratories)

BLOOD TESTING AND PLASMA

AN ACT to repeal sections 23-01-13, 23-07-07.1, 23-07-07.2, 23-07-07.3, and 23-07-07.4 of the North Dakota Century Code, relating to the submission of blood samples of pregnant women for a serological test for syphilis and the state department of health and consolidated laboratories obtaining, storing, and distributing blood plasma.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Sections 23-01-13, 23-07-07.1, 23-07-07.2, 23-07-07.3, and 23-07-07.4 of the North Dakota Century Code are repealed.

Approved March 8, 1991
Filed March 8, 1991

CHAPTER 264

SENATE BILL NO. 2155
(Committee on Human Services and Veterans Affairs)
(At the request of the State Department of Health and
Consolidated Laboratories)

NOISE

AN ACT to repeal section 23-01-17 of the North Dakota Century Code, relating to noise being harmful to health and safety, the power to regulate, and hearings, appeals, penalties, and injunctions concerning noise.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 23-01-17 of the North Dakota Century Code is repealed.

Approved March 14, 1991
Filed March 15, 1991

CHAPTER 265

HOUSE BILL NO. 1310
(Representatives D. Olsen, Larson, Skjerven)
(Senators Nalewaja, Krebsbach)

LIFE-PROLONGING TREATMENT

AN ACT to create and enact a new subsection to section 23-06.4-11 of the North Dakota Century Code, relating to declarations governing the use, withholding, or withdrawal of life-prolonging treatment; and to amend and reenact subsection 4 of section 23-06.4-02 and sections 23-06.4-03 and 23-06.4-04 of the North Dakota Century Code, relating to declarations governing the use, withholding, or withdrawal of life-prolonging treatment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 23-06.4-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Life-prolonging treatment" means any medical procedure, treatment, or intervention that, when administered to a qualified patient, will serve only to prolong the process of dying and where, in the judgment of the attending physician, death will occur whether or not the treatment is utilized. The term does not include the provision of appropriate nutrition and hydration or the performance of any medical procedure necessary to provide comfort, care, or alleviate pain; or medical procedures, treatment, or intervention performed in an emergency, prehospital situation.

SECTION 2. AMENDMENT. Section 23-06.4-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-06.4-03. Declaration relating to use of life-prolonging treatment.

1. An individual of sound mind and eighteen or more years of age may execute at any time a declaration governing the use, withholding, or withdrawal of life-prolonging treatment. The declaration must be signed by the declarant, or another at the declarant's direction, and witnessed by two individuals who are not:
 - a. Related to the declarant by blood or marriage;
 - b. Entitled to any portion of the estate of the declarant under any will of the declarant or codicil to the will, existing by operation of law or otherwise, at the time of the declaration;
 - c. Claimants against any portion of the estate of the declarant at the time of the execution of the declaration;

- d. Directly financially responsible for the declarant's medical care;
 - e. Attending physicians of the declarant.
2. If the declarant is a resident of a long-term care facility, as defined in section 50-10.1-01, at the time the declaration is executed, one of the two witnesses to the declaration must be a regional long term care ombudsman as provided in section 50-10.1-02 recognized member of the clergy, an attorney licensed to practice in this state, or a person as may be designated by the department of human services or the county court for the county in which the facility is located.
3. A declaration must be substantially in the form set forth in subdivision a or b, as applicable, but the declaration may include additional specific directives. The invalidity of any additional specific directives does not affect the validity of the declaration.
- a. A declaration to withdraw or withhold life-prolonging treatment must be substantially in the following form:

Declaration made this ---- day of ----- (month, year).

I, -----, being at least eighteen years of age and of sound mind, willfully and voluntarily make known my desire that my life must not be artificially prolonged under the circumstances set forth below, and do hereby declare:

- 1. If at any time I should have an incurable condition caused by injury, disease, or illness certified to be a terminal condition by two physicians, and where the application of life-prolonging treatment would serve only to artificially prolong the process of my dying and my attending physician determines that my death is imminent whether or not life-prolonging treatment is utilized, I direct that such treatment be withheld or withdrawn, and that I be permitted to die naturally.
- 2. In the absence of my ability to give directions regarding the use of such life-prolonging treatment, it is my intention that this declaration be honored by my family and physicians as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences of that refusal, which is death.
- 3. If I have been diagnosed as pregnant and that diagnosis is known to my physician, this declaration is not effective during the course of my pregnancy.
- 4. I understand the full import of this declaration, and I am emotionally and mentally competent to make this declaration.
- 5. I understand that I may revoke this declaration at any time.

Signed -----
City, County, and State of Residence -----
The declarant has been personally known to me and I believe the declarant to be of sound mind. I am not related to the declarant by blood or marriage, nor would I be entitled to any portion of the declarant's estate upon the declarant's death. I am not the declarant's attending physician, a person who has a claim against any portion of the declarant's estate upon the declarant's death, or a person directly financially responsible for the declarant's medical care.

Witness -----
Witness -----

- b. A declaration to direct the use of life-prolonging treatment must be substantially in the following form:

Declaration made this ----- day of ----- (month, year).
I, -----, being at least eighteen years of age and of sound mind, willfully and voluntarily make known my desire to extend my life under the circumstances set forth below, and do hereby declare:

1. If at any time I should have an incurable condition caused by injury, disease, or illness certified to be a terminal condition by two physicians, I direct the use of life-prolonging treatment that could extend my life.
2. In the absence of my ability to give directions regarding the use of such life-prolonging treatment, it is my intention that this declaration be honored by my family and physicians as the final expression of my legal right to direct medical or surgical treatment and accept the consequences of that directive.
3. I understand the full import of this declaration, and I am emotionally and mentally competent to make this declaration.
4. I understand that I may revoke this declaration at any time.

Signed -----
City, County, and State of Residence -----
The declarant has been personally known to me and I believe the declarant to be of sound mind. I am not related to the declarant by blood or marriage, nor would I be entitled to any portion of the declarant's estate upon the declarant's death. I am not the declarant's attending physician, a person who has a claim against any portion of the declarant's estate upon the declarant's death, or a person directly financially responsible for the declarant's medical care.

Witness -----
Witness -----

4. A physician or other health care provider who is furnished a copy of the declaration shall make it a part of the declarant's medical

record and, if unwilling to comply with the declaration, promptly so advise the declarant.

SECTION 3. AMENDMENT. Section 23-06.4-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-06.4-04. When declaration operative. A declaration becomes operative when it is communicated to the attending physician, and the declarant is determined by the attending physician and another physician to be in a terminal condition and no longer able to make decisions regarding administration of life-prolonging treatment. A declaration made under section 23-06.4-03 does not obligate the physician to use, withhold, or withdraw life-prolonging treatment but is presumptive evidence of the declarant's desires concerning the use, withholding, or withdrawal of such treatment and must be given great weight by the physician in determining the intent of the incompetent declarant. A declaration made under section 23-06.4-03 does not apply to emergency treatment performed in a prehospital situation.

SECTION 4. A new subsection to section 23-06.4-11 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Declarations made under section 23-06.4-03 do not apply to emergency treatment performed in a prehospital situation.

Approved April 8, 1991
Filed April 8, 1991

CHAPTER 266

HOUSE BILL NO. 1384
(Representatives DeMers, Kolbo, Rydell)
(Senators Mushik, Redlin, Stenehjem)

HEALTH CARE POWER OF ATTORNEY

AN ACT to provide for durable powers of attorney for health care; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Statement of purpose. The purpose of this Act is to enable adults to retain control over their own medical care during periods of incapacity through the prior designation of an individual to make health care decisions on their behalf. This Act does not condone, authorize, or approve mercy killing, or permit an affirmative or deliberate act or omission to end life, other than to allow the natural process of dying.

SECTION 2. Definitions. In this Act, unless the context otherwise requires:

1. "Agent" means an adult to whom authority to make health care decisions is delegated under a durable power of attorney for health care.
2. "Attending physician" means the physician, selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient.
3. "Capacity to make health care decisions" means the ability to understand and appreciate the nature and consequences of a health care decision, including the significant benefits and harms of and reasonable alternatives to any proposed health care.
4. "Durable power of attorney for health care" means a document delegating to an agent the authority to make health care decisions executed in accordance with the provisions of this chapter.
5. "Health care decision" means consent to, refusal to consent to, withdrawal of consent to, or request for any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition.
6. "Health care provider" means an individual or facility licensed, certified, or otherwise authorized or permitted by law to administer health care, for profit or otherwise, in the ordinary course of business or professional practice.
7. "Long-term care facility" or "long-term care services provider" means a long-term care facility as defined in section 50-10.1-01.

8. "Principal" means an adult who is a resident of this state and who has executed a durable power of attorney for health care.

SECTION 3. Scope and duration of authority.

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

SECTION 4. Restrictions on who can act as agent. A person may not exercise the authority of agent while serving in one of the following capacities:

1. The principal's health care provider;
2. A nonrelative of the principal who is an employee of the principal's health care provider;
3. The principal's long-term care services provider; or
4. A nonrelative of the principal who is an employee of the principal's long-term care services provider.

SECTION 5. Execution and witnesses. The durable power of attorney for health care must be signed by the principal in the presence of at least two or more subscribing witnesses, neither of whom may, at the time of execution, be the agent, the principal's health or long-term care services provider or

the provider's employee, the principal's spouse or heir, a person related to the principal by blood or adoption, a person entitled to any part of the estate of the principal upon the death of the principal under a will or deed in existence or by operation of law, or any other person who has, at the time of execution, any claims against the estate of the principal. The witnesses shall affirm that the principal appeared to be of sound mind and free from duress at the time the durable power of attorney for health care was signed and that the principal affirmed that the principal was aware of the nature of the documents and signed it freely and voluntarily. If the principal is physically unable to sign, the durable power of attorney for health care may be signed by the principal's name being written by some other person in the principal's presence and at the principal's express direction.

SECTION 6. Acceptance of appointment - Withdrawal. To be effective, the agent must accept the appointment in writing. Subject to the right of the agent to withdraw, the acceptance creates a duty for the agent to make health care decisions on behalf of the principal at such time as the principal becomes incapable. Until the principal becomes incapable, the agent may withdraw by giving notice to the principal. After the principal becomes incapable, 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 7. Revocation.

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

SECTION 8. Inspection and disclosure of medical information. Subject to any limitations set forth in the durable power of attorney for health care by the principal, an agent whose authority is in effect may for the purpose of making health care decisions:

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

3. Consent to the disclosure of such medical information.

SECTION 9. Action by provider.

1. A principal's health care or long-term care services provider, and employees thereof, having knowledge of the principal's durable power of attorney for health care, are bound to follow the directives of the principal's designated agent to the extent they are consistent with this Act and the durable power of attorney for health care.
2. If because of a moral or other conflict with a specific directive given by the agent, a principal's health care or long-term care services provider finds it impossible to follow that directive, the provider has the duty to inform the agent and if possible the principal, and take all reasonable steps to transfer care of the principal to another health care provider who is willing to honor the agent's directive.

SECTION 10. Freedom from influence.

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

SECTION 11. Reciprocity. This chapter does not limit the enforceability of a durable power of attorney for health care or similar

instrument executed in another state or jurisdiction in compliance with the law of that state or jurisdiction.

SECTION 12. Immunity.

1. A person acting as agent pursuant to a durable power of attorney for health care may not be subjected to criminal or civil liability for making a health care decision in good faith pursuant to the terms of the durable power of attorney for health care and the provisions of this Act.
2. A health care or long-term care services provider, or any other person acting for the provider or under the provider's control may not be subjected to civil or criminal liability, or be deemed to have engaged in unprofessional conduct, for any act or intentional failure to act done in good faith and with ordinary care if the act or intentional failure to act is done pursuant to the dictates of the durable power of attorney for health care, the directives of the patient's agent and the provisions of this Act.

SECTION 13. Guardianship authority - Conflicting declaration.

1. Unless a court of competent jurisdiction determines otherwise, a durable power of attorney for health care executed pursuant to this Act takes precedence over any authority to make medical decisions granted to a guardian pursuant to chapter 30.1-28.
2. To the extent a durable power of attorney for health care conflicts with a declaration executed in accordance with chapter 23-06.4, the instrument executed later in time controls.

SECTION 14. Liability for health care costs. Liability for the cost of health care provided pursuant to the agent's decision is the same as if the health care were provided pursuant to the principal's decision.

SECTION 15. Validity of previously executed durable powers of attorney. This Act does not affect the validity or enforceability of durable powers of attorney pertaining to health care executed before the effective date of this Act.

SECTION 16. Use of statutory form. The statutory form of durable power of attorney described in section 17 of this Act may be used and is the preferred form by which a person may execute a durable power of attorney for health care pursuant to this Act. It is known as "the statutory form of durable power of attorney for health care".

SECTION 17. Statutory form of durable power of attorney. The statutory form of durable power of attorney is as follows:

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

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

You must be at least eighteen years of age and a resident of the state of North Dakota for this document to be legally valid and binding.

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

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

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

This document gives your agent authority to request, consent to, refuse to consent to, or to withdraw consent for any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition if you are unable to do so yourself. This power is subject to any statement of your desires and any limitation that you include in this document. You may state in this document any types of treatment that you do not desire. In addition, a court can take away the power of your agent to make health care decisions for you if your agent authorizes anything that is illegal; acts contrary to your known desires; or where your desires are not known, does anything that is clearly contrary to your best interest.

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

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

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

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

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

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

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

1. DESIGNATION OF HEALTH CARE AGENT. I, _____

(insert your name and address)

do hereby designate and appoint: _____

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

2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE. By this document I intend to create a durable power of attorney for health care.
3. GENERAL STATEMENT OF AUTHORITY GRANTED. Subject to any limitations in this document, I hereby grant to my agent full power and authority to make health care decisions for me to the same extent that I could make such decisions for myself if I had the capacity to do so. In exercising this authority, my agent shall make health care decisions that are consistent with my desires as stated in this document or otherwise made known to my agent, including my desires concerning obtaining or refusing or withdrawing life-prolonging care, treatment, services, and procedures.

(If you want to limit the authority of your agent to make health care decisions for you, you can state the limitations in paragraph 4, "Statement of Desires, Special Provisions, and Limitations", below. You can indicate your desires by including a statement of your desires in the same paragraph.)

4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS. (Your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, state your desires in the space provided below. You should consider whether you want to include a statement of your desires concerning life-prolonging care, treatment, services, and procedures. You can also include a statement of your desires concerning other matters relating to your health care. You can also make your desires known to your agent by discussing your desires with your agent or by some other means. If there are any types of treatment that you do not want to be used, you should state them in the space below. If you want to limit in any other way the authority given your agent by this document, you should state the limits in the space below. If you do not state any limits, your agent will have broad powers to make health care decisions for you, except to the extent that there are limits provided by law.)

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

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

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

(You may attach additional pages if you need more space to complete your statement. If you attach additional pages, you must date and sign EACH of the additional pages at the same time you date and sign this document.) If you wish to make a gift of any bodily organ you may do so pursuant to North Dakota Century Code chapter 23-06.2, the Uniform Anatomical Gift Act.

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

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

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

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

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

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

This durable power of attorney for health care expires on _____

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

8. DESIGNATION OF ALTERNATE AGENTS. (You are not required to designate any alternate agents but you may do so. Any alternate agent you designate will be able to make the same health care decisions as the agent you designated in paragraph 1, above, in the event that agent is unable or ineligible to act as your agent. If the agent you designated is your spouse, he or she becomes ineligible to act as your agent if your marriage is dissolved. Your agent may withdraw whether or not you are capable of designating another agent.)

If the person designated as my agent in paragraph 1 is not available or becomes ineligible to act as my agent to make a health care decision for me or loses the mental capacity to make health care decisions for me, or if I revoke that person's appointment or authority to act as my agent to make health care decisions for me, then I designate and appoint the following persons to serve as my agent to make health care decisions for me as authorized in this document, such persons to serve in the order listed below:

- a. First Alternate Agent: _____

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

- b. Second Alternate Agent: _____

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

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

DATE AND SIGNATURE OF PRINCIPAL
(YOU MUST DATE AND SIGN THIS POWER OF
ATTORNEY)

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

(you sign here)

(THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS IT IS SIGNED BY TWO (2) QUALIFIED WITNESSES WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE. IF YOU HAVE ATTACHED ANY ADDITIONAL PAGES TO THIS FORM, YOU MUST DATE AND SIGN EACH OF THE ADDITIONAL PAGES AT THE SAME TIME YOU DATE AND SIGN THIS POWER OF ATTORNEY.)

STATEMENT OF WITNESSES

This document must be witnessed by two (2) qualified adult witnesses. None of the following may be used as a witness:

- 1. A person you designate as your agent or alternate agent;
- 2. A health care provider;
- 3. An employee of a health care provider;
- 4. The operator of a long-term care facility;
- 5. An employee of an operator of a long-term care facility;
- 6. Your spouse;
- 7. A person related to you by blood or adoption;
- 8. A person entitled to inherit any part of your estate upon your death; or
- 9. A person who has, at the time of executing this document, any claim against your estate.

I declare under penalty of perjury that the person who signed or acknowledged this document is personally known to me to be the principal, that the principal signed or acknowledged this durable power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as attorney in fact by this document, and that I am not a health care provider; an employee of a health care provider; the operator of a long-term care facility; an employee of an operator of a long-term care facility; the principal's spouse; a person related to the spouse by blood or adoption; a person entitled to inherit any part of the principal's estate upon death; nor a person who has, at the time of executing this document, any claim against the principal's estate.

Signature: _____	Residence Address: _____
Print Name: _____	_____
Date: _____	_____
Signature: _____	Residence Address: _____
Print Name: _____	_____
Date: _____	_____

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

If I choose to withdraw during the time the principal is competent I must notify the principal of my decision. If I choose to

withdraw when the principal is incapable of making the principal's health care decisions, I must notify the principal's physician.

(Signature of agent/date)

(Signature of alternate agent/date)

SECTION 18. Penalties.

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

Approved April 16, 1991
Filed April 18, 1991

CHAPTER 267

SENATE BILL NO. 2156
(Committee on Human Services and Veterans Affairs)
(At the request of the State Department of Health and
Consolidated Laboratories)

REPORTABLE DISEASES OR CONDITIONS

AN ACT to amend and reenact section 23-07-01 of the North Dakota Century Code, relating to human diseases or conditions that must be reported.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-07-01. Powers of state department of health and consolidated laboratories. The state department of health and consolidated laboratories shall designate the diseases or conditions that must be reported ~~as prescribed in this chapter, and it may classify such diseases as contagious or infectious, sexually transmitted, and dangerous. Such diseases or conditions may include contagious, infectious, sexually transmitted, or chronic diseases or any illness or injury which may have a significant impact on public health.~~

Approved March 11, 1991
Filed March 11, 1991

CHAPTER 268

SENATE BILL NO. 2157
(Committee on Human Services and Veterans Affairs)
(At the request of the State Department of Health and
Consolidated Laboratories)

AIDS TESTING ELIMINATED

AN ACT to amend and reenact section 23-07-07 of the North Dakota Century Code, relating to a requirement that individuals infected with a sexually transmitted disease be tested for antibodies or antigens of the human immunodeficiency virus.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-07-07. Sexually transmitted diseases - Additional powers and duties of health officers. The state health officer, and each district, county, and city health officer within the officer's jurisdiction, when necessary for the protection of public health, shall:

1. Make examination of any person reasonably suspected of being infected with a sexually transmitted disease and detain that person until the results of the examination are known.
2. Require any person infected with a sexually transmitted disease to report for treatment to a reputable physician and to continue such treatment until cured or, if incurable, continue indefinitely such treatment as recommended by the physician.
3. ~~Require any person infected with a sexually transmitted disease to be examined or tested for the presence of antibodies to or antigens of the human immunodeficiency virus. The state health officer shall designate sexually transmitted diseases for which contact tracing is appropriate. If contact tracing is appropriate, the attending physician, or health officer if authorized by the attending physician, shall notify the following individuals regarding possible exposure to contagious disease:~~
 - a. ~~Known sexual partners of an individual infected with a sexually transmitted disease.~~
 - b. ~~Individuals who either have been, or may be, exposed to an individual infected with a sexually transmitted disease in a manner that creates an epidemiologically demonstrated risk of transmission.~~
4. 3. Investigate sources of infection of sexually transmitted diseases.

- 5- 4. Cooperate with the proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution, including providing proper officials with all relevant information available concerning individuals who are infected with the human immunodeficiency virus and who are engaged in prostitution.

Approved March 11, 1991

Filed March 11, 1991

CHAPTER 269

SENATE BILL NO. 2160
(Committee on Human Services and Veterans Affairs)
(At the request of the State Department of Health and
Consolidated Laboratories)

AIDS TESTING

AN ACT to amend and reenact sections 23-07.5-02, 23-07.5-03, 23-07.5-04 and subdivision a of subsection 1 of section 23-07.5-05 of the North Dakota Century Code, relating to consent for human immunodeficiency virus testing and confidentiality of test results.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07.5-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. Except when testing and disclosure is otherwise provided for by law, a health care provider, blood bank, blood center, or plasma center may not subject a person to a test for the presence of an antibody to the human immunodeficiency virus unless the subject of the test, the parent or legal guardian or custodian of a minor who is the subject of the test, or the legal guardian of an incapacitated person who is the subject of the test, first provides informed consent for testing or disclosure as provided under subsection 2.
2. A health care provider, blood bank, blood center, or plasma center that subjects an individual to a test for the presence of an antibody to the human immunodeficiency virus under subsection 1 shall provide the potential test subject, the parent or legal guardian or custodian of a potential test subject that is a minor, or the legal guardian of a potential test subject who is incapacitated, with an informed consent form and shall obtain the ~~potential test subject's~~ appropriate individual's signature on the form. The form must contain:
 - a. The name of the potential test subject who is giving consent and whose test results may be disclosed and, where appropriate, the name of the individual providing consent on behalf of the potential test subject.
 - b. A statement of explanation ~~to the potential test subject~~ that the test results may be disclosed as provided under subsection 1 of section 23-07.5-05 and either a listing of the persons or circumstances specified under subsection 1 of section 23-07.5-05 or a statement that the listing is available upon request.

c. Spaces specifically designated for the following purposes:

- (1) The signature of the ~~potential test subject person~~ providing informed consent for the testing and the date on which the consent is signed; and
- (2) The name of ~~a~~ any person to whom the ~~potential test subject authorizes that disclosure of~~ test results may be made disclosed, if any; the date on which the consent to disclosure is signed; and the time period during which the consent to disclosure is effective.

SECTION 2. AMENDMENT. Section 23-07.5-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-07.5-03. Written consent to disclosure. An individual who is tested for the presence of an antibody to the human immunodeficiency virus, that individual's parent or legal guardian or custodian in the case of a minor, or that individual's legal guardian in the case of an incapacitated individual, may authorize in writing a health care provider, blood bank, blood center, or plasma center to disclose the test results to any person at any time after providing informed consent for disclosure. A record of this consent must be maintained by the health care provider, blood bank, blood center, or plasma center authorized to disclose test results.

SECTION 3. AMENDMENT. Section 23-07.5-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-07.5-04. Record maintenance. A health care provider, blood bank, blood center, or plasma center that obtains a specimen of body fluids or tissues for the purpose of testing for the presence of an antibody to the human immunodeficiency virus shall:

1. Obtain from the subject, the subject's parent or legal guardian or custodian if the subject is a minor or the subject's legal guardian if the subject is incapacitated, informed consent for testing or disclosure, unless testing and procedures for disclosure are otherwise provided by law.
2. Maintain a record of the consent received under subsection 1.
3. Maintain a record of the test results obtained.

SECTION 4. AMENDMENT. Subdivision a of subsection 1 of section 23-07.5-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. The subject of the test, in the case of a minor the parent or legal guardian or custodian of the subject of the test, in the case of an incapacitated person the legal guardian of the subject of the test. In the event the subject of a test is placed in a foster home, or is to be adopted, the parent, legal guardian or custodian, as the case may be, may disclose the results of the test to the foster parents or potential adoptive parents.

CHAPTER 270

HOUSE BILL NO. 1045
(Legislative Council)
(Interim Jobs Development Commission)

BED AND BREAKFAST FACILITIES

AN ACT to amend and reenact subsection 1 of section 23-09.1-01 and section 23-09.1-02 of the North Dakota Century Code, relating to the definition of a bed and breakfast facility and rules adopted by the state department of health and consolidated laboratories regulating bed and breakfast facilities; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 23-09.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Bed and breakfast facility" means a private home ~~which~~ that is used to provide accommodations for a charge to the public, with ~~at most two not more than four lodging units for up to eight persons per night and,~~ in which no more than two family style meals per day are provided.

SECTION 2. AMENDMENT. Section 23-09.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-09.1-02. Bed and breakfast facilities - Powers of state department of health and consolidated laboratories. The state department of health and consolidated laboratories, ~~prior to January 1, 1986,~~ shall establish by rule the procedures for licensing, qualifying, classifying, inspecting, and regulating persons providing bed and breakfast facilities in private homes, including rules affecting the health and safety of the facility and the persons using the facility. No political subdivision, including a home rule city or county, may impose health and safety, licensure, or inspection requirements that exceed the requirements of this chapter or rules adopted by the department of health and consolidated laboratories.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 25, 1991
Filed March 26, 1991

CHAPTER 271

SENATE BILL NO. 2588

(Nething, Marks)

(Approved by the Committee on Delayed Bills)

CARE FACILITIES FOR AUTISTIC PERSONS

AN ACT to create and enact a new chapter to title 23 of the North Dakota Century Code, relating to residential care facilities for autistic persons; 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 23 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter unless the context otherwise requires:

1. "Autism" means a brain disorder that may prevent understanding of what a person sees, hears, or otherwise senses and is conceptualized as a behavioral syndrome with multiple biological manifestations.
2. "Autistic-like" means exhibiting one or more of the characteristics of autism.
3. "Department" means the department of health and consolidated laboratories.
4. "Residential care facility for children with autism or autistic-like characteristics" means a living facility providing twenty-four hour assistance for five or more children not related by blood or marriage to the operator through a multidisciplinary approach including a medical diagnosis of autism or autistic-like characteristics.
5. "Residential care giver" means an individual who routinely provides assistance with activities of daily living or direct care services in implementing the treatment plan, behavior management, or education to residents in a residential care facility for children with autism or autistic-like characteristics.

Department to establish standards - Licensing - Inspection. The department shall establish standards for the licensure of residential care facilities for children with autism or autistic-like characteristics, regularly inspect the facilities, and grant annual licenses to the facilities that meet the established standards. Upon the request of the department, the state fire marshal shall inspect any facility seeking licensure, or any licensed facility, and shall report the inspection results to the department.

License required - Term - Revocation. No person may operate or manage a residential care facility for children with autism or autistic-like characteristics unless the facility has been licensed by the department. The license must state the name of the owner or manager of the facility, its location, and the maximum number of persons who may reside in the facility at any time. The license is not valid for more than one year. Any license may be revoked by the department for violation of this chapter or the rules adopted by the department.

Method of providing service. A residential care facility for children with autism or autistic-like characteristics must be specifically designed, arranged, and staffed to provide twenty-four hour assistance with activities of daily living in a home-like environment in response to the individual needs of the residents. A residential care facility for children with autism or autistic-like characteristics must provide or make arrangements for diagnostic and treatment services, behavioral management, and educational services to enable residents to attain or maintain their highest practicable level of functioning.

Records. The owner or manager of a residential care facility for children with autism or autistic-like characteristics must keep a record of every individual admitted to the facility, in the manner and form prescribed by the department.

Violations - Injunction. The department shall prosecute all violations of this chapter. The department may apply to the district court of the county in which the residential care facility for children with autism or autistic-like characteristics is located, for a temporary or permanent injunction restraining any person from conducting, managing, or operating a facility without a license as required by this chapter.

Authority to adopt rules. The department may adopt rules necessary to carry out its responsibilities under this chapter.

Penalty.

1. Any person who operates or manages a residential care facility for children with autism or autistic-like characteristics without first obtaining a license as required by this chapter is guilty of a class B misdemeanor.
2. Any person who violates any provision of this chapter or any rule adopted under this chapter may be assessed a civil penalty not to exceed one thousand dollars for each violation and for each day the violation continues, plus interest and any costs incurred by the department to enforce this penalty. The civil penalty may be imposed by a court in a civil proceeding or by the state health officer through an administrative hearing under chapter 28-32. The assessment of a civil penalty does not preclude the imposition of other sanctions authorized by rules adopted under this chapter.

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

Approved April 5, 1991
Filed April 8, 1991

CHAPTER 272

HOUSE BILL NO. 1296
(Representatives DeMers, Trautman, Gilmore)
(Senator Mathern)

CONSENT FOR HEALTH CARE ON ANOTHER'S BEHALF

AN ACT to provide for informed consent to health care on behalf of an incapacitated person by certain classes of persons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Persons authorized to provide informed consent to health care for incapacitated persons - Priority.

1. Informed consent for health care for a minor patient or a patient who is determined by a physician to be an incapacitated person, as defined in subsection 2 of section 30.1-26-01, and unable to consent may be obtained from a person authorized to consent on behalf of the patient. Persons in the following classes and in the following order of priority are authorized to provide informed consent to health care on behalf of the patient:
 - a. The appointed guardian or custodian of the patient, if any;
 - b. The individual, if any, to whom the patient has given a durable power of attorney that encompasses the authority to make health care decisions;
 - c. The patient's spouse;
 - d. Children of the patient who are at least eighteen years of age;
 - e. Parents of the patient, including a stepparent who has maintained significant contacts with the incapacitated person;
 - f. Adult brothers and sisters of the patient who have maintained significant contacts with the incapacitated person;
 - g. Grandparents of the patient;
 - h. Grandchildren of the patient who are at least eighteen years of age and who have maintained significant contacts with the incapacitated person; or
 - i. A close relative or friend of the patient who has maintained significant contacts with the incapacitated person.
2. A physician seeking informed consent for proposed health care for a minor patient or a patient who is an incapacitated person and is unable to consent must make reasonable efforts to locate and secure

authorization for the health care from a competent person in the first or succeeding class identified in subsection 1. If the physician is unable to locate such person, authorization may be given by any person in the next class in the order of descending priority. A person identified in subsection 1 may not provide informed consent to health care if a person of higher priority has refused to give such authorization.

3. Before any person authorized to provide informed consent pursuant to this section exercises that authority, the person must first determine in good faith that the patient, if not incapacitated, would consent to the proposed health care. If such a determination cannot be made, the decision to consent to the proposed health care may be made only after determining that the proposed health care is in the patient's best interests.
4. No person authorized to provide informed consent pursuant to this section may provide consent for sterilization, abortion, or psychosurgery; or for admission to a state mental health facility or a secured unit of a long-term care facility for a period of more than forty-five days without a mental health proceeding or other court order.

Approved April 8, 1991
Filed April 8, 1991

CHAPTER 273

SENATE BILL NO. 2517
(Mutch)

SELF-SERVICE FUEL DISPENSERS

AN ACT to amend and reenact subsection 2 of section 23-13-02.3 of the North Dakota Century Code, relating to the operation of self-service motor fuel dispensing facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 23-13-02.3 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. At all times during the operation of a self-service motor fuel dispensing facility, the owner, operator, employee, or authorized attendant shall be on the premises and shall supervise the operation thereof. The person attending the operation shall refuse service to anyone who appears for any reason to be unable to dispense ~~such~~ motor fuel safely. If, however, the filling station provides pump island service to its customers, the attendant must provide refueling services to any mobility-impaired person stopped at a self-service motor fuel dispensing unit who requests assistance and whose vehicle displays a certificate issued under section 39-01-15. No additional cost may be charged to a mobility-impaired person because of the service. This subsection does not apply to any self-service motor fuel dispensing unit equipped with a card-operated or, credit card-operated, cash-operated, or key-operated dispensing device, provided that all persons possessing the card or keys required to operate the device have been instructed in the proper and safe operation of the device. Self-service motor fuel dispensing units equipped with a card-operated, credit card-operated, cash-operated, or key-operated dispensing device are subject to and must conform with the emergency controls, emergency contact, and fire control standards as specified by the national fire protection association. In addition, the operating instructions, warning signs, and emergency instructions specified in the standards of the national fire protection association must be conspicuously posted in the dispensing area.

Approved March 25, 1991
Filed March 26, 1991

CHAPTER 274

SENATE BILL NO. 2218
(Committee on Human Services and Veterans Affairs)
(At the request of the State Department of Health and
Consolidated Laboratories)

HEALTH DISTRICT EXPANSION OR MERGER

AN ACT to create and enact five new sections to chapter 23-14 of the North Dakota Century Code, relating to health district expansion or merger; and to amend and reenact subsection 1 of section 23-14-11 of the North Dakota Century Code, relating to the mill levy for health districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 23-14-11 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The district board of health, as provided in this chapter, shall prepare a budget for the next fiscal year at the time at which and in the manner in which a county budget is adopted and shall submit that budget to the board of county commissioners for approval. The amount budgeted and approved shall be prorated, in health districts composed of more than one county, among the various counties in the health district according to the assessed valuation of the respective counties comprising the health district, and shall, within ten days after approval by the board of county commissioners, be certified by the district health board to the respective county auditors of such counties, and shall be included in the levies of such counties. The amount called for in the budget shall not exceed the amount which can be raised by a levy of ~~two and one-half~~ five mills on the taxable valuation, subject to public hearing in each county comprising the district at least fifteen days prior to action taken by the joint boards of county commissioners. Action taken by the joint boards of county commissioners shall be based on the record including comments received at the public hearing. Such levy shall not be subject to the limitation on the county tax levy for general and special county purposes, and the amount derived therefrom shall be placed in a special health fund. The health fund shall be deposited with and disbursed by the treasurer of the district board of health, and all counties comprising the health district shall remit and make settlements with such treasurer quarterly. Any funds remaining at the end of any fiscal year may be carried over to the next fiscal year.

SECTION 2. A new section to chapter 23-14 of the North Dakota Century Code is created as follows:

Authority to adopt rules. The department may adopt rules to implement this chapter. The rules must include provisions to aid health districts in providing equality of health care and to provide a procedure for distributing grants.

SECTION 3. A new section to chapter 23-14 of the North Dakota Century Code is created as follows:

Expansion of health districts - Request of nonparticipating city or county. A county contiguous to a health district, or a city adjacent to a county that is a health district, which is not included within any health district may, upon adoption of a resolution by its governing body, request that it be included as a part of an existing health district. Upon a receipt of a request to become a part of an existing health district, the board of the health district shall consider the request, and if it approves the request by a majority vote shall submit the matter to the governing board of each county and city which comprises the health district. If each governing board approves the request by a majority vote, the requesting county or city becomes a part of the health district.

SECTION 4. A new section to chapter 23-14 of the North Dakota Century Code is created and enacted as follows:

Expansion of health district - Approval of state health officer. Each entity submitting a request to be included within a health district shall first obtain the approval of the state health officer. The state health officer, or the state health officer's designee, shall confer individually with the requesting county or city and the existing health district concerning the health needs of each. If the state health officer is satisfied the needs of the requesting county or city comport with the needs of the existing health district, the state health officer shall grant approval for the submission of the request pursuant to section 1 of this Act.

SECTION 5. A new section to chapter 23-14 of the North Dakota Century Code is created and enacted as follows:

Expansion of health district - Number of board members. Upon expansion of a health district pursuant to sections 1 and 2 of this Act, the number of board members must be adjusted to allow the added county or city the same proportion of members allowed to member cities and counties of the existing health district as determined under section 23-14-04.

SECTION 6. A new section to chapter 23-14 of the North Dakota Century Code is created and enacted as follows:

Expansion of health district - Merger of participating health districts. Any two or more contiguous health districts may merge into a single health district upon a majority vote of their respective boards and a majority vote of each of the governing boards of the respective city or county. The assets of each merging health district become the property of the newly created health district. Board membership of the new health district must be determined pursuant to section 23-14-04. The new health district has the same authority and may exercise any of the powers that could have been exercised by the previous health districts. The mill levy in the newly created health district may differ from, and is not limited by, the mill levy levied previously but may not exceed the amount which may be levied under section 23-14-11.

Approved March 14, 1991
Filed March 15, 1991

CHAPTER 275

SENATE BILL NO. 2158
(Committee on Human Services and Veterans Affairs)
(At the request of the State Department of Health
and Consolidated Laboratories)

NURSING FACILITY LICENSING

AN ACT to amend and reenact section 23-16-11 of the North Dakota Century Code, relating to civil penalties for violating nursing facility licensing requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 ~~within the meaning of~~ subject to this chapter, without first obtaining a license ~~therefor as herein provided as required by this chapter~~, or who ~~shall violate~~ violates any of the provisions of this chapter ~~shall be~~ 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 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 to enforce this penalty. This civil penalty may be imposed by a court in a civil proceeding or by the state health officer through an administrative hearing under chapter 28-32. If a civil penalty levied by the department 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 to enforce the penalty may be withheld from payments due to the person or nursing facility from the department of 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.

Approved April 5, 1991
Filed April 8, 1991

CHAPTER 276

HOUSE BILL NO. 1216

(Committee on Human Services and Veterans Affairs)
(At the request of the State Department of Health and
Consolidated Laboratories)

NURSING FACILITY RECEIVERSHIP

AN ACT to create and enact sections 23-16.1-02.1 and 23-16.1-02.2 of the North Dakota Century Code, relating to appointment of a receiver of a nursing facility in cases of imminent threats to life or health.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 23-16.1-02.1 of the North Dakota Century Code is created and enacted as follows:

23-16.1-02.1. Imminent threat to health or safety - Conditions for appointment of receiver - Appointment of receiver. If the department determines a situation exists which constitutes an imminent threat to health or safety of the residents of a nursing facility, the department may take immediate control of the nursing facility and appoint an interim administrator. Within ten days of taking control of a nursing facility, the department shall petition the district court of the district in which the nursing facility is located to establish a receivership. The court shall grant the petition if it finds the department is substantially justified in concluding there was an imminent threat to life or health of the residents. In making its decision the court shall consider the matters set forth in section 23-16.1-02, any matters that the department considered in reaching its decision, and any other matters bearing on the ability of the nursing facility to provide for the health or safety of its residents. If the court grants the petition, the court shall also reconfirm the appointment of the interim administrator or direct the state health officer to choose another pursuant to section 23-16.1-03. Any receiver reconfirmed or appointed pursuant to this section shall comply with sections 23-16.1-03 through 23-16.1-05. Neither the department nor the court may terminate the appointment of a receiver appointed under this section until the nursing facility has complied with federal and state law and demonstrated management capability to ensure continued compliance and the health and safety of the residents.

As used in this section, an "imminent threat to health or safety" means without intervention one or more of the following will occur to the residents: death, loss of mobility, partial disability, loss of motor skills, loss of speech, hearing, sight, or other ability to function within normal limits for an individual of that age and condition.

SECTION 2. Section 23-16.1-02.2 of the North Dakota Century Code is created and enacted as follows:

23-16.1-02.2. Closure of facility or removal of residents. In the event of an emergency any receiver appointed under section 23-16.1-02.1 may remove any or all residents of a nursing facility and close the facility if deemed necessary.

Approved March 27, 1991

Filed March 28, 1991

CHAPTER 277

HOUSE BILL NO. 1060
(Legislative Council)
(Interim Political Subdivisions Committee)

SOLID WASTE REDUCTION AND MANAGEMENT

AN ACT to create and enact a new subsection to section 23-29-02, four new subsections to section 23-29-04, and eleven new sections to chapter 23-29 of the North Dakota Century Code, relating to solid waste management; to amend and reenact subsections 3 and 5 of section 23-20.2-02, section 23-29-03, subsection 8 of section 23-29-04, sections 23-29-05, 23-29-06, 23-29-12, and subsection 1 of section 39-10-59 of the North Dakota Century Code, relating to solid waste management; to repeal sections 23-29-15 and 24-12-03 of the North Dakota Century Code, relating to a short title and to the deposit of garbage; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 3 and 5 of section 23-20.2-02 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. "Underground disposal facility" means any drilled, bored, or excavated device or installation to provide for the subsurface disposal of waste, ~~but shall~~. The term does not include a solid waste management facility, ~~sanitary landfill~~, authorized under chapter 23-29.
5. "Waste" includes liquid wastes, gaseous wastes, and solid wastes as defined in ~~subsection 5 of~~ section 23-29-03, and all unusable industrial material including spent nuclear fuels and other unusable radioactive material not brought into this state for disposal.

SECTION 2. A new subsection to section 23-29-02 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Encourage by 1995 at least a ten percent reduction in volume of municipal waste deposited in landfills, by 1997 at least a twenty-five percent reduction, and by 2000 at least a forty percent reduction.

SECTION 3. AMENDMENT. Section 23-29-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-29-03. Definitions.

1. "Collection" means the act of removing aggregation of solid wastes waste from the central storage point of the primary source or residential container places at which the waste was generated.
2. "Department" means the state department of health and consolidated laboratories charged with the administration and enforcement of this chapter.
3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water including ground water.
4. "Infectious waste" means solid waste that may contain pathogens with sufficient virulence and in sufficient quantity that exposure of a susceptible human or animal to the solid waste could cause the human or animal to contract an infectious disease.
5. "Landfill" means a publicly or privately owned area of land where solid wastes are permanently disposed.
6. "Litter" means discarded and abandoned solid waste materials.
7. "Major appliance" means an air conditioner, clothes dryer, clothes washer, dishwasher, freezer, microwave oven, oven, refrigerator, stove, furnace, water heater, humidifier, dehumidifier, garbage disposal, trash compactor, or other similar appliance.
8. "Municipal waste" means solid waste that includes garbage, refuse, and trash generated by households, motels, hotels, and recreation facilities, by public and private facilities, and by commercial, wholesale, and private and retail businesses. The term does not include special waste.
9. "Open burning" means the combustion of solid waste without control of combustion air to maintain adequate temperature for efficient combustion, containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and control of the emission of the combustion products.
10. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, federal agency, political subdivision of this state or any other state or political subdivision thereof, and any legal successor, representative agent, or agency of the foregoing.
11. "Political subdivision" means a city, county, township, or solid waste management authority.
- 5- 12. "Resource recovery" means the recovery of material or energy use, reuse, or recycling of materials, substances, energy, or products contained within or derived from solid wastes municipal waste.
- 6- "Sanitary landfilling" means an engineered method of disposing of solid wastes on land in a manner that protects the environment by spreading the waste in thin layers, compacting it to the smallest practical volume, and covering it with soil by the end of each working day.

- 7- 13. "Solid ~~wastes waste~~" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, ~~but~~. The term does not include solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges ~~which~~ that are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended [Pub. L. 92-500, 86 Stat. 816, 33 U.S.C. 1251 et seq.], or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended [68 Stat. 919, 42 U.S.C. 2011 et seq.].
- 8- 14. "Solid waste management" means the purposeful systematic control of the storage, collection, transport, ~~handling, composting, resource recovery, land treatment,~~ and disposal of solid ~~wastes waste~~.
- 9- 15. "Special waste" means nonhazardous solid waste, including: waste from the combustion or gasification of municipal waste; waste from industrial and manufacturing processes; waste from energy conversion facilities; waste from crude oil and natural gas exploration and production; waste from mineral and ore mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste.
16. "Storage" means the containment and holding of solid waste after generation for a temporary period, at the end of which the solid waste is processed for resource recovery, treated, disposed of, or stored elsewhere.
- +0- 17. "Transport" means the offsite movement of solid waste subsequent to collection and prior to disposal.

SECTION 4. AMENDMENT. Subsection 8 of section 23-29-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. ~~Prepare, adopt, promulgate, modify, repeal,~~ Adopt and enforce rules and regulations governing solid waste ~~storage, collection, transport, handling, resource recovery, and disposal~~ management, in order to conserve the air, water, and land resources of the state; protect the public health; prevent environmental pollution and public nuisances; and enable ~~it~~ the department to ~~carry out the purposes and provisions of administer~~ this chapter and, the adopted solid waste management plan, and delegated federal programs.

SECTION 5. Four new subsections to section 23-29-04 of the 1989 Supplement to the North Dakota Century Code are created and enacted as follows:

Adopt rules to establish categories of solid waste and solid waste management facilities based on waste type, facility operation, or other facility characteristics.

Adopt rules to establish standards and requirements for each category of solid waste management facility.

Adopt rules to establish financial assurance requirements to be met by any person proposing construction or operation of a solid waste management facility sufficient to provide for closure and postclosure activities. Financial assurance requirements must include any or all of the following: insurance, trust funds, surety bonds, letters of credit, personal bonds, certificates of deposit, and financial tests or corporate guarantees.

Conduct an environmental compliance background review of any applicant for any permit requested after the effective date of this Act. In conducting the review, if the department finds that an applicant for a permit has intentionally misrepresented or concealed any material fact from the department, or has obtained a permit by intentional misrepresentation or concealment of a material fact, 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 three years preceding the application for the permit, or 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 three years preceding the application for the permit, the department may deny the application. The department shall consider the relevance of the offense to the business to which the 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.

SECTION 6. AMENDMENT. Section 23-29-05 of the North Dakota Century Code is amended and reenacted as follows:

23-29-05. Municipal Local government ordinances. Any political subdivision of the state may enact and enforce a solid waste management ordinance if such ordinance is equal to or more stringent than this chapter and the rules and regulations authorized herein adopted pursuant to this chapter.

SECTION 7. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Littering and open burning prohibited - Penalty.

1. No person may discard and abandon any litter, furniture, or major appliances upon public property or upon private property not owned by that person, unless the property is designated for the disposal of litter, furniture, or major appliances and that person is authorized to use the property for that purpose.
2. No person may engage in the open burning of solid waste, unless the burning is conducted in accordance with rules adopted by the department.
3. A person violating this section is guilty of an infraction, except if the litter discarded and abandoned amounted to more than one cubic foot [0.0283 cubic meters] in volume or if the litter consisted of furniture or a major appliance, the offense is a class B misdemeanor.

SECTION 8. AMENDMENT. Section 23-29-06 of the North Dakota Century Code is amended and reenacted as follows:

23-29-06. Regional District solid waste management - Penalty. Cities, townships, counties, and agencies, and any combination thereof, may by ordinance or contract join in a regional solid waste management agency or program.

1. All land in this state must be within a solid waste management district.
2. The boundaries of each district must be established pursuant to chapter 54-40.1 and as delineated by executive order of the governor number 1978-12, affirmed by executive order number 1986-4.
3. The governing board of each solid waste management district must include a representative of each county within the district, one representative from cities within each county within the district, a representative of the licensed disposal facilities within the district, and a representative of the waste haulers within the district. Members representing political subdivisions must be appointed by the subdivisions involved. The members representing licensed disposal facilities and waste haulers must be selected by the members appointed by the political subdivisions from a list of candidates submitted by each of those groups. The members of the board may be the members of the regional planning councils appointed under subdivision a of subsection 1 of section 54-40.1-03.
4. The members of the district board annually shall select a chairman and vice chairman. Each member may receive compensation for service on the board and is entitled to reimbursement of expenses at the rate provided by law for state officials. Any compensation and reimbursement of expenses of the public entity representatives must be made by the governing bodies of the entities making the appointments to the district board and any compensation and reimbursement of expenses of the private entity representatives must be made by the private entity represented by the member.
5. A political subdivision may opt out of one solid waste management district and join another if the board of each district involved consents to the change.
6. Solid waste must be managed at solid waste management facilities identified in the district's solid waste management plan. A person who violates this subsection is subject to a civil penalty not to exceed twenty-five thousand dollars per day per violation.
7. By January 1, 1992, the department shall adopt rules establishing guidelines for the submission of comprehensive solid waste management plans as required under subsection 8.
8. By January 1, 1993, each solid waste management district shall submit a comprehensive solid waste management plan to the department for approval. The plan must include the district's ability to properly manage and plan for adequate capacity, accessibility, and waste flow control. The plan must take into

consideration existing waste transportation patterns and the ability of existing landfills to handle solid waste.

9. By July 1, 1993, the department shall incorporate all of the district solid waste management plans into a comprehensive statewide solid waste management plan.

SECTION 9. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Powers of a solid waste management district. A solid waste management district may:

1. Execute contracts and take other actions necessary to carry out the purposes of the district.
2. Accept and administer federal and state grants and loans.
3. Appropriate and expend moneys.
4. Establish bylaws for the management of the affairs of the district and enact and enforce rules necessary for the conduct of the district.

SECTION 10. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

District authority limitation. Sections 8 and 9 of this Act apply to energy conversion facilities and coal mining operations that dispose their solid waste onsite, only to the extent that these facilities provide the districts with sufficient information to include in the district's development of a comprehensive plan for the district.

SECTION 11. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Solid waste management districts - Authorities or programs. The governing bodies of political subdivisions participating in a solid waste management district may establish and operate a waste management authority pursuant to chapter 54-40 and section 11-11-14 or may establish a solid waste management program pursuant to section 40-05-01. The waste management authority or program may provide solid waste management services and determine charges for those services.

SECTION 12. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Prohibition in landfill disposal - Lead-acid batteries accepted as trade-ins.

1. Infectious waste must be properly treated before disposal by methods approved by the department. A person may not knowingly deposit in a landfill untreated infectious waste.
2. Except as provided in subsection 3, after January 1, 1992, a person may not place in municipal waste or discard or dispose of in a landfill lead-acid batteries, used-motor oil, or major appliances.

3. If resource recovery markets are not available for the items listed in subsection 2, the items must be disposed of in a manner approved by the department.
4. Lead-acid batteries must be accepted as trade-ins for new lead-acid batteries by any person who sells lead-acid batteries at retail.

SECTION 13. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Preconstruction site review. The department, in cooperation with the state engineer and the state geologist, shall develop criteria for siting a solid waste disposal facility based upon potential impact on environmental resources. Any application for a landfill permit received after the department develops siting criteria as required by this section must be reviewed for site suitability by the department after consultation with the state engineer and state geologist before any site development. Site development does not include the assessment or monitoring associated with the review as required by the department in consultation with the state engineer and state geologist.

SECTION 14. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Review of existing municipal waste landfills. By July 1, 1995, the state engineer and state geologist shall complete site suitability reviews of all existing municipal waste landfills within the state. The reports of such reviews must be provided to the department for use in site improvement, site remediation, or landfill closure.

SECTION 15. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Waste characterization. The department may not allow the storage or disposal of solid waste from outside this state, unless it is demonstrated that the governing authority or the generator of the solid waste from outside this state has an effective program for waste quality control and for waste characterization.

SECTION 16. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Municipal waste landfills and incinerators - Certification. A municipal waste landfill and a municipal waste incinerator must have at least one individual certified by the department onsite at all times during the operation of the landfill or incinerator. The department shall adopt training standards and certification requirements.

SECTION 17. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Public educational materials - Municipal waste reduction and recycling. The department, after consulting with the superintendent of public instruction, shall develop and disseminate educational materials to encourage voluntary municipal waste reduction, source separation, reuse of materials, recycling efforts, and appropriate management of municipal waste.

SECTION 18. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Statewide coordinating committee. The chairman of the governing board of each solid waste management district shall select a representative to serve on a statewide solid waste management coordinating committee. A representative of the department, the state engineer, and the state geologist shall also serve on the committee. The coordinating committee shall assist the districts in managing and regulating solid waste and shall coordinate efforts of the districts with state agencies. In addition, the coordinating committee shall review alternative means of managing solid waste including a review of forms of public ownership and financial assurance mechanisms for waste management facilities. A report of the review must be provided to the legislative assembly and the governor by January 1, 1993.

SECTION 19. AMENDMENT. Section 23-29-12 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-29-12. Penalties. Any Unless another penalty is specifically prescribed, a person violating any provision of this chapter, or any rule, regulation, order, or condition in a permit condition issued thereunder under this chapter, is subject to a civil penalty not to exceed three hundred one thousand dollars per day of such violation.

SECTION 20. AMENDMENT. Subsection 1 of section 39-10-59 of the North Dakota Century Code is amended and reenacted as follows:

1. No person may throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans, rubbish, or any other substance likely to injure any person, animal, or vehicle, ~~or throw or deposit rubbish of any kind upon the highway.~~

SECTION 21. REPEAL. Sections 23-29-15 and 24-12-03 of the North Dakota Century Code are repealed.

Approved April 8, 1991
Filed April 8, 1991

CHAPTER 278

HOUSE BILL NO. 1111
(Committee on Natural Resources)
(At the request of the State Department of Health and
Consolidated Laboratories)

HAZARDOUS WASTE LAW EXEMPTIONS

AN ACT to amend and reenact section 23-20.3-10 of the North Dakota Century Code, relating to applicability of hazardous waste laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-20.3-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-20.3-10. Applicability. The hazardous waste provisions of this chapter do not apply to the following wastes to the degree to which they are exempted from regulation by sections 3001(b)(2) and 3001(b)(3)(A) of the Resource Conservation and Recovery Act as amended by the Solid Waste Disposal Act Amendments of 1980 [P.L. 96-482]:

1. Drilling fluids, produced water, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy.
2. Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion or gasification of coal or other fossil fuels.
3. Solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore.
4. Cement kiln dust waste.

Except, that when a waste disposal site for any of the above wastes is to be closed, the owner or operator shall file a plat of the disposal site with the register of deeds of each county in which the facility is located, together with a description of the wastes placed therein.

Approved March 27, 1991
Filed March 28, 1991

CHAPTER 279

HOUSE BILL NO. 1397
(Representatives Mahoney, Grosz)
(Senator Stenehjem)

CONTRACTOR'S LICENSE FOR ASBESTOS REMOVAL

AN ACT to amend and reenact subsection 4 of section 23-25-04.1 of the North Dakota Century Code, relating to permits for asbestos contractors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 23-25-04.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. Possession of an approved permit or registration certificate ~~shall~~ does not relieve any person of the responsibility to comply with applicable emission limitations or with any other provision of law or regulations adopted pursuant thereto and does not relieve any person from the requirement that that person possess a valid contractor's license issued under chapter 43-07.

Approved March 8, 1991
Filed March 8, 1991

CHAPTER 280

HOUSE BILL NO. 1207

(Committee on Natural Resources)

(At the request of the State Department of Health and
Consolidated Laboratories)

WATER SUPPLY AND WASTEWATER DISPOSAL SYSTEM OPERATORS

AN ACT to amend and reenact sections 23-26-01, 23-26-02, 23-26-03, 23-26-05, 23-26-06, 23-26-07, and 23-26-08 of the North Dakota Century Code, relating to certification of water supply and wastewater disposal system operators; and to repeal section 23-26-04 of the North Dakota Century Code, relating to an advisory board of certification.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-26-01 of the North Dakota Century Code is amended and reenacted as follows:

23-26-01. Statement of policy. It is hereby declared to be the policy of the state of North Dakota to act to protect the public health and welfare of the people of the state and to protect the state's water resources by classifying all public water supply and wastewater ~~treatment plants disposal systems~~ in the state and by requiring the examination of operators and the certification of their competency to supervise the operations of such facilities.

SECTION 2. AMENDMENT. Section 23-26-02 of the North Dakota Century Code is amended and reenacted as follows:

23-26-02. Definitions. For the purpose of this chapter, the following words and phrases shall have the meanings ascribed to them in this section:

- ~~3-~~ 1. "Certificate" ~~shall mean~~ means a certificate of competency issued by the ~~state health officer~~ department stating that the operator holding the certificate has met the requirements for the specified operator ~~classification grade~~ in the certification program.
- ~~1-~~ 2. "Department" ~~shall mean~~ means the North Dakota state department of health and consolidated laboratories.
- ~~2-~~ "Board" ~~shall mean the board of certification-~~
3. "Ground water under the direct influence of surface water" means any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as Giardia lamblia, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

- 6- 4. "Operator" ~~shall mean~~ means the person in direct responsible charge of the operation of a water treatment plant, a water distribution system, or a wastewater treatment plant. ~~Operators of plants or systems serving less than ten families are excluded from this chapter, or a wastewater collection system.~~
5. "Population equivalent" for a wastewater collection system or treatment plant means the calculated population that would normally contribute the same amount of biochemical oxygen demand per day computed on the basis of seventeen hundredths of one pound [77.11 grams] of five-day, twenty-degree Celsius [68-degree Fahrenheit] biochemical oxygen demand per capita per day.
6. "Wastewater collection system" means that portion of the wastewater disposal system in which wastewater is conveyed to a wastewater treatment plant from the premises of a contributor.
7. "Wastewater disposal system" means the system of pipes, structures, and facilities through which wastewater from a public sewer system or industry is collected and treated for final disposal. Such system must serve a population equivalent of twenty-five or more persons.
- 7- 8. "Wastewater treatment plant" ~~shall mean the facility or group of units~~ means that portion of the wastewater disposal system used for the treatment and disposal of wastewater from public sewer systems and for the reduction in handling of solids removed from such wastes and which serves ten or more families or an industry employing ten or more persons and the solids removed from such wastewater.
- 6- 9. "Water distribution system" ~~shall mean~~ means that portion of the water supply system in which water is conveyed from the water treatment plant or other supply point to the premises of the consumer.
- 4- 10. "Water supply system" ~~shall mean~~ means the system of pipes, structures, and facilities through which a public water supply is obtained, treated, and sold or distributed for human consumption or household use. Such system ~~shall serve at least ten~~ must have at least fifteen service connections or regularly serve an average of twenty-five or more families or shall serve an industry employing ten or more persons for at least sixty days a year.
- 5- 11. "Water treatment plant" ~~shall mean~~ means that portion of the water supply system which in some way alters the physical, chemical, or bacteriological quality of the water.

SECTION 3. AMENDMENT. Section 23-26-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-26-03. Classification of plants and systems. The department shall classify all water treatment plants, water distribution systems, and wastewater treatment plants and wastewater collection systems with due regard to the size, type, character of water and wastewater to be treated and other physical conditions affecting such treatment plants and distribution systems facilities, and according to the skill, knowledge, and experience that an

operator in responsible charge must have to successfully supervise the operation of such water treatment plants, water distribution systems, and wastewater treatment plants facilities, so as to protect the public health and prevent pollution of the waters of the state.

SECTION 4. AMENDMENT. Section 23-26-05 of the North Dakota Century Code is amended and reenacted as follows:

23-26-05. Certification. When the department is satisfied that an applicant is qualified by examination or otherwise to supervise the operation of such treatment plants and water distribution systems and upon recommendation of the advisory board, the department will issue a certificate attesting to the competency of the applicant as an operator. The certificate will indicate the classification of works treatment plant or system which the operator is qualified to supervise. Such certificates shall continue in effect for one year from the date of issuance, unless sooner revoked by the department.

1. Renewal of certificate. A certificate issued under the provisions of this chapter is valid for only one year and expires on the first day of July of the year after which it was issued.
2. Revocation. The department may revoke or suspend the certificate of an operator issued hereunder if it is found that the operator has practiced fraud or deception in obtaining the certificate or in the performance of his duty as an operator; or when it is found that reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or when it is found that the operator is incompetent and unable properly to perform his duties as an operator. No certificate shall be revoked or suspended except after a hearing before the chief, environmental health and engineering services, state department of health section of the department, or his designated representative. If a certificate is suspended or revoked as herein provided, a new application for certification may be considered by the department if, when, and after the conditions upon which suspension or revocation was based have been corrected and evidence of this fact has been satisfactorily submitted to the department. A new certificate may then be granted by the department.
- 2- 3. Prior certificates honored. Certificates in appropriate classification will be issued to operators, who, on before the effective date of this chapter, hold certificates of competency attained under the voluntary certification program in this state at such time they submit a proper application shall continue in effect.
- 3- Certificates of proper classification shall be issued without examination to operators of treatment works, collection systems or distribution systems, including the person who is in direct responsible charge, on the effective date of this chapter. The governing body or owner must certify such persons in writing to the department. The certificates so issued will be valid only for that particular treatment plant or system, and shall be marked "restricted".

SECTION 5. AMENDMENT. Section 23-26-06 of the North Dakota Century Code is amended and reenacted as follows:

23-26-06. Fees. The department is authorized to charge a fee for certificates issued under this chapter, but such fees shall not exceed ~~ten~~ five ~~twenty-five~~ twenty-five dollars for the initial certificate, nor more than ~~five~~ twenty-five dollars for the annual renewal certificate. All receipts from such fees shall be deposited in the state treasury to be credited to a special fund to be known as the "operators' certification fund" to be used by the department to administer and enforce the provisions of this chapter; ~~to pay the expenses of the advisory board;~~ and financially assist the department in conducting operator training programs. Any surplus at the end of the fiscal year shall be retained by the department for future expenditures.

SECTION 6. AMENDMENT. Section 23-26-07 of the North Dakota Century Code is amended and reenacted as follows:

23-26-07. Duties of the department. It shall be the duty of the department to:

1. Hold at least one examination each year at ~~the~~ a designated time and place for the purpose of examining candidates for certification.
2. ~~Advise and promote~~ Promote the program of certification of water supply and wastewater disposal system operators.
3. Distribute ~~applications~~ notices and ~~notices~~ applications and to receive and evaluate applications.
4. Collect fees for ~~both~~ initial certification and annual renewal in an amount not to exceed that permitted by this chapter.
5. Prepare, conduct, and grade examinations.
6. Maintain records of operator qualifications, ~~and~~ certification examination results, and ~~to maintain~~ a register of certified operators.
7. Promote and schedule regular training schools and programs.
8. Promulgate; ~~with the advice of the advisory board;~~ such rules and ~~regulations as are~~ necessary to carry out the provisions of this chapter.

SECTION 7. AMENDMENT. Section 23-26-08 of the North Dakota Century Code is amended and reenacted as follows:

23-26-08. Unlawful operation. ~~On and after one year following the effective date of this chapter, it shall be unlawful for any person; firm; corporation; municipality; or any other governmental subdivision or agency; operating a water treatment plant; water distribution system; or wastewater treatment plant serving a demand equal to one thousand five hundred or more persons to operate same unless the competency of the operator to operate such a plant or system is duly certified to by the department in a grade corresponding to the classification of that portion of the system to be supervised. Provided; however; that plants and systems serving a demand~~

equal to five hundred or more persons shall comply with the provisions of this chapter not later than July 1, 1976. Except as provided below, is unlawful for any person, firm, corporation, municipality, or any other governmental subdivision or agency, after three years following the effective date of this Act, to operate a water treatment plant or water distribution system serving twenty-five or more persons or a wastewater treatment plant or wastewater collection system serving a population equivalent of twenty-five or more persons unless the competency of the operator to operate such a plant or system is certified by the department in a grade corresponding to the classification of that portion of the system to be supervised. Operators of wastewater collection systems and wastewater stabilization ponds or other nonmechanical wastewater treatment plants that serve a population equivalent less than five hundred persons are excluded from this chapter. Operators of water supply systems that serve other than year-round residents are excluded from this chapter if all of the following conditions are met:

1. The water supply is obtained solely from ground water sources that are not under the direct influence of surface water.
2. Treatment, if provided, consists strictly of disinfection, fluoridation, sequestration, corrosion control, or other processes that involve simple chemical addition and minor operational control.
3. The water supply system is not required by the federal Safe Drinking Water Act or its implementing regulations to be operated by qualified personnel.

SECTION 8. REPEAL. Section 23-26-04 of the North Dakota Century Code is repealed.

Approved March 25, 1991
Filed March 26, 1991

CHAPTER 281

HOUSE BILL NO. 1131
(Committee on Political Subdivisions)
(At the request of the Department of Health and
Consolidated Laboratories)

LICENSED AMBULANCE SERVICE FINANCIAL ASSISTANCE

AN ACT to amend and reenact section 23-27-04.2 of the North Dakota Century Code, relating to state financial assistance to licensed ambulance services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-27-04.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-27-04.2. Licensed ambulance services - State assistance. The health services branch of the state department of health and consolidated laboratories shall assist in the training of personnel of certain ambulance services licensed under this chapter as determined by the branch and financially shall assist certain ambulance services licensed under this chapter as determined by the branch in obtaining equipment. Assistance provided under this section must be within the limits of legislative appropriation. The health services branch shall adopt criteria for eligibility for assistance in the training of personnel of various types of licensed ambulance services. To qualify for financial assistance for equipment, a licensed ambulance service shall certify, in the manner required by the health services branch, that the service has fifty percent of the amount of funds necessary for identified equipment acquisitions. The health services branch 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 health services branch may establish minimum and maximum amounts of financial assistance to be provided an ambulance service under this section. If applications for financial assistance exceed the amount of allocated and available funds, the health services branch may prorate the funds among the applicants in accordance with criteria adopted by the health services branch. ~~The health services branch shall distribute the funds on June thirtieth of each year.~~ 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.

Approved March 25, 1991
Filed March 26, 1991

CHAPTER 282

SENATE BILL NO. 2162
(Committee on Human Services and Veterans Affairs)
(At the request of the State Department of Health and
Consolidated Laboratories)

EMERGENCY MEDICAL SERVICES PERSONNEL

AN ACT to create and enact a new section to chapter 23-27 of the North Dakota Century Code, relating to training, testing, and certification of emergency medical services personnel.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-27 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Emergency medical services personnel training, testing, and certification. The state health council shall adopt rules prescribing minimum training, testing, and certification standards for prehospital emergency medical services personnel. Rules adopted must include a definition of minimum applicable standards, a definition of prehospital emergency medical services personnel, and provide for a mechanism for certifying persons who have met the required standards.

Approved March 14, 1991
Filed March 15, 1991

CHAPTER 283

SENATE BILL NO. 2090
(Freborg)

SOLID WASTE DISPOSAL FACILITIES

AN ACT to prohibit the department of health and consolidated laboratories from issuing permits for the construction or operation of certain solid waste disposal facilities; to amend and reenact section 23-29-07.1 of the North Dakota Century Code, relating to fees for solid waste facility permits; to provide for a legislative council study of solid waste disposal methods and facilities; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Moratorium on permit applications of certain solid waste disposal facilities. The department of health and consolidated laboratories shall suspend for two years after the effective date of this Act any decisions related to permit applications received after January 1, 1991, for the construction or operation of a landfill in which ash resulting from the incineration of municipal solid waste is disposed. The moratorium is established to provide the opportunity for additional study of the environmental effects of the disposal of municipal solid waste ash and the regulations necessary to obtain a permit for those solid waste disposal facilities. This section does not apply to any permit application for a landfill that receives for disposal ten tons [9071.80 kilograms] or less per day of the ash or to any North Dakota or federal court-ordered reapplication involving an application originally received prior to January 1, 1991, and which is limited to the type and amount of waste represented in the original application.

SECTION 2. AMENDMENT. Section 23-29-07.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-29-07.1. Fees - Deposit in operating fund. The department by rule may prescribe and provide for the payment and collection of reasonable fees for the issuance of permits or registration certificates for registering, licensing, or permitting solid waste generators, transporters, and treatment, storage, recycling or disposal facilities. The permit or registration certificate fees must be based on the anticipated cost of filing and processing the application, taking action on the requested permit or registration certificate, and conducting a monitoring and inspection program to determine compliance or noncompliance with the permit or registration certificate. Any moneys collected for permit licensing or registration fees must be deposited in the department operating fund in the state treasury and any expenditures from the fund are subject to appropriation by the legislative assembly. Applicants for special use solid waste management facilities shall submit a minimum fee as follows:

1. Twenty thousand dollars for any facility that receives on average one hundred tons [90718 kilograms] or more per day.

2. Ten thousand dollars for any facility which receives on average more than ten tons [9071.80 kilograms] but less than one hundred tons [90718 kilograms] per day.

SECTION 3. LEGISLATIVE COUNCIL STUDY OF SOLID WASTE DISPOSAL METHODS AND FACILITIES. During the 1991-92 interim the legislative council shall study the effects of various methods of solid waste disposal and of solid waste disposal facilities, with emphasis on the disposal of ash resulting from the incineration of municipal solid waste. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the fifty-third legislative assembly.

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

Approved April 16, 1991
Filed April 18, 1991

CHAPTER 284

HOUSE BILL NO. 1061
(Legislative Council)
(Interim Political Subdivisions Committee)

SOLID WASTE SURCHARGE

AN ACT to create and enact four new sections to chapter 23-29 of the North Dakota Century Code, relating to solid waste management; to provide a penalty; to provide an appropriation; and to state legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Solid waste management fund - Administration. The solid waste management fund is a special fund in the state treasury. The Bank of North Dakota shall administer the fund. The fund is a revolving fund, subject to appropriation by the legislative assembly. The Bank may annually deduct up to one-half of one percent of the fund balance including the principal balance of the outstanding loans as a service fee for administering the fund. The Bank shall contract with a certified public accounting firm to audit the fund once every two years. 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 54-44.1-11 does not apply to the fund.

SECTION 2. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Surcharge - Penalty. Beginning January 1, 1992, any person or political subdivision that provides services for the collection of municipal waste shall pay to the state tax commissioner a monthly surcharge of twenty cents for each household account, which includes any account resulting from the collection of municipal waste generated by a single residence, multiple residence of not more than three units, bunkhouse, crew quarters, campground, or picnic ground, and the following monthly surcharges for commercial accounts:

1. For each commercial account for which the monthly collection fee is not more than ten dollars, twenty cents.
2. For each commercial account for which the monthly collection fee is more than ten dollars but not more than fifty dollars, seventy-five cents.
3. For each commercial account for which the monthly collection fee is more than fifty dollars but not more than one hundred dollars, one dollar and fifty cents.

4. For each commercial account for which the monthly collection fee is more than one hundred dollars but not more than five hundred dollars, three dollars.
5. For each commercial account for which the monthly collection fee is more than five hundred dollars, one percent of the gross receipts for collection services.

The monthly surcharge for a multiple unit commercial account is twenty cents per unit or the applicable commercial rate under subsections 1 through 5, whichever is higher. For the purposes of this section, a commercial account includes any account resulting from the collection of municipal waste generated by a multiple residence of four or more units, mobile home park, motel, hotel, store, office building, restaurant, or warehouse. A multiple unit commercial account includes a multiple residence of four or more units, a mobile home park, a shopping center, an office building, and any other commercial account in which four or more units pay a single collection fee. The surcharge must be added to the price or charge for collection services, constitutes a part of that price or charge, is a debt from the generator of the waste to the collector until paid, and is recoverable at law in the same manner as other debts. A surcharge equivalent to that for commercial accounts must be assessed on fees imposed on municipal waste delivered directly to a landfill but not included in the collection surcharge above. The surcharge collected under this section must accompany the quarterly report required by section 3 of this Act. The state tax commissioner shall forward all moneys received under this section to the state treasurer quarterly. The state treasurer shall place the moneys in the solid waste management fund. A person who violates this section is guilty of a class B misdemeanor.

SECTION 3. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Report of surcharge collection. No later than thirty days after the conclusion of each quarter, each person or political subdivision operating a service for collection of municipal waste shall send to the state tax commissioner a correct report of the surcharge collected for the previous quarter as required under section 2 of this Act. The provisions of chapter 57-39.2 relating to the administration of the sales tax, except the provisions relating to refunds and credits and any provision in conflict with this Act, govern the administration of the surcharge imposed under section 2 of this Act. A surcharge that has been collected, but which is not due, must be used to offset any surcharge to be imposed against the person from whom the surcharge was originally collected. A dispute relating to the imposition of the surcharge may be appealed to the department for a final decision. The department's decision may not be appealed under chapter 28-32.

SECTION 4. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Applications for grants or loans - Loan terms. Moneys in the solid waste management fund may be used to make grants or low interest loans to political subdivisions for waste reduction, planning, resource recovery, and recycling projects with an emphasis on marketing. An application for a grant or loan out of moneys in the solid waste management fund must be made to the department. The department shall review an application to determine if the purpose of the grant or loan is consistent with the purposes of the fund and

the district solid waste management plan. The department shall adopt rules to implement this section. If the department approves an application, the department shall forward the application and the results of the department's review of the application to the Bank of North Dakota. The Bank, in consultation with the department, shall determine the financial criteria that must be met for an application to be approved. A loan must be repaid within a period not exceeding twenty years at an interest rate of four percent.

SECTION 5. APPROPRIATION. There is hereby appropriated out of any moneys in the state aid distribution fund, not otherwise appropriated, the sum of \$350,000, or so much thereof as may be necessary, to the department of health and consolidated laboratories for distribution to the solid waste management districts to assist the districts in developing comprehensive solid waste management plans for each district, and \$100,000, or so much thereof as may be necessary, to the department of health and consolidated laboratories to provide assistance to the solid waste management districts in developing the comprehensive plans for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 6. LEGISLATIVE INTENT. It is the intent of the legislative assembly that any moneys remaining in the solid waste management fund on June 30, 1993, be available for appropriation for the biennium beginning July 1, 1993, and ending June 30, 1995, and that the fund be used solely for the purpose of solid waste management activities.

Approved April 16, 1991
Filed April 18, 1991

CHAPTER 285

HOUSE BILL NO. 1422
(Starke, Jacobson, Wentz)

HOSPITAL DISTRICT SIZE

AN ACT to amend and reenact subsection 1 of section 23-30-02 of the North Dakota Century Code, relating to the area to be included in a hospital district.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 23-30-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The board of county commissioners of any county, or two or more boards of county commissioners acting jointly, shall, when requested to do so by petition of twenty percent of the qualified electors of the area to be included in a proposed hospital district, as determined by those voting for governor in that geographical area at the last gubernatorial election, in any territory equivalent in area to one township or more, submit the question to the qualified electors at a special election or the next regularly scheduled primary or general election as to whether or not the qualified electors of the area desire to establish a hospital district and whether they approve of the mill levy authorized by section 23-30-07 for the purpose of supporting such hospital district. If sixty percent of the qualified electors voting in the election within the proposed district approve, the county commission or county commissions, as the case may be, shall, by resolution, create the hospital district comprising the entire area as described in the petition.

Approved April 3, 1991
Filed April 4, 1991

CHAPTER 286

SENATE BILL NO. 2231
(Committee on Natural Resources)
(At the request of the State Department of Health
and Consolidated Laboratories)

GROUND WATER PROTECTION

AN ACT relating to protection of ground water resources, use of chemicals, coordination of educational programs and safe disposal of wastes, and water monitoring authority where contamination may exist.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Degradation prevention program - Maintenance of waters. This Act establishes a degradation prevention program for the purpose of protecting ground water resources, encouraging the wise use of agricultural chemicals, providing for ground water protection, providing for public education regarding preservation of ground water resources, and providing for safe disposal of wastes in a manner that will not endanger the state's ground water resource. Waters of the state must be maintained within standards established under this Act unless it can be affirmatively demonstrated that a change in quality is justifiable to provide necessary economic or social development and will not adversely affect the beneficial uses of water.

SECTION 2. Administration of Act. The state department of health and consolidated laboratories shall administer this Act. For purposes of this Act, "commissioner" means the commissioner of agriculture and "department" means the state department of health and consolidated laboratories. Notwithstanding section 4-35-06, the commissioner of agriculture shall administer chapter 4-35 as it relates to pesticide usage.

SECTION 3. Education program. The department, the commissioner, and the North Dakota state university extension service and North Dakota agricultural experiment station shall cooperate with other state and federal agencies on the development of a ground water protection education program.

SECTION 4. Chemical use data and confidentiality requirement. The department may require chemical use data from product registrants on products that have been or may likely be found in ground water in order to conduct its ground water protection program. This information must include chemical registration data and sales information. The department shall keep this information confidential.

SECTION 5. Ground water standards. The department shall establish standards for compounds in ground water as set forth by other states and the United States environmental protection agency unless new scientifically confirmed data provides justification for changing these standards.

SECTION 6. Ground water quality monitoring. The department shall conduct ground water quality monitoring activities in cooperation with the

state engineer and other state agencies. Based on monitoring results, the department shall implement or require appropriate mitigation activities or remedial action to prevent future contamination of ground water. The commissioner may implement or require appropriate mitigation activities pursuant to chapter 4-35 to prevent future contamination of ground water as it relates to the use of pesticides.

SECTION 7. Notification requirement. Any person with verifiable information on the presence of contamination of ground water within the state shall notify the department regarding such contamination.

SECTION 8. Access for ground water monitoring. The department may request landowners or operators to 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 such application and upon 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 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 such disclosure. Without such a determination, disclosure of the information is a violation of section 12.1-13-01.

SECTION 9. Pollution prevention criteria. The commissioner, in cooperation with the department, North Dakota state university extension service, and the North Dakota agricultural experiment station, may develop pollution prevention criteria for areas utilized for mixing and storing of agricultural chemicals at the retail and end use levels.

SECTION 10. Wellhead protection program. The department in cooperation with the state engineer and state geologist shall assist in implementing a public water supply wellhead protection program for protection of ground water resources utilizing existing state and local statutory authority.

SECTION 11. Rules. The department, with the approval of the commissioner and the state engineer, shall adopt rules necessary for implementation of this Act.

SECTION 12. Producer liability. Liability may not be imposed upon an agricultural producer for costs of active cleanup, or for any damage associated with or resulting from the detection in ground water, of a pesticide if the applicator has complied with label instructions and other precautions for application of the pesticide and the applicator has a valid appropriate applicator's certification. Compliance with these requirements may be raised as an affirmative defense by an agricultural producer.

Approved April 16, 1991
Filed April 18, 1991